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QUESTIONS PRESENTED

1. Whether actual malice can be inferred when quotations attributed to a public figure libel plaintiff do not alter the substantive content of remarks indisputably made by the public figure, or are rational interpretations of ambiguous remarks made by the public figure.

2. Whether the two federal courts below were correct in finding that the public figure libel plaintiff could not show actual malice under the standard articulated in *Anderson* v. *Liberty Lobby*, 477 U.S. 242 (1986).

CERTIFICATE PURSUANT TO SUPREME COURT RULE 29.1

Pursuant to Supreme Court Rule 29.1, respondents provide the following information on the corporate parties and their parent corporations.

The New Yorker Magazine, Inc., Respondent

Alfred A. Knopf, Inc., Respondent

The New Yorker Magazine, Inc., and Alfred A. Knopf, Inc., are owned, through intermediate corporations, by Advance Publications, Inc. All are privately held corporations.

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No. 89-1799

In the Supreme Court of the United States

OCTOBER TERM, 1989

JEFFREY M. MASSON,
Petitioner

VS.

THE NEW YORKER MAGAZINE, INC.,
ALFRED A. KNOPF, INC. AND
JANET MALCOLM,
Respondents

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

INTRODUCTION—SUMMARY OF ARGUMENT

Petitioner, an outspoken public figure, has charged, through five different complaints, two courts, and six years of litigation, that a serious writer "fabricated" quotations with actual malice. The two courts have needed to consider only a portion of respondents' evidence—disregarding the writer's notes but considering a 1,056-page transcript of tape-recorded interviews—in rejecting petitioner's claims. These courts have carefully examined the facts of this case and simply applied existing law to them. Petitioner now asks this Court to discard or ignore both its own precedents and the holdings of lower courts for the purpose of ruling that *any* departure from full verbatim quotations—even one that does not change the substance of what was said—should expose both writer and publisher to liability. This Court, like the lower courts, should reject petitioner's far-reaching theory and deny the Petition.

STATEMENT OF THE CASE

A. Factual Background

Plaintiff and petitioner Jeffrey Masson (hereafter "petitioner" or "Masson") is an outspoken and admitted public figure in the field of psychotherapy. He has levelled harsh public criticism at Sigmund Freud, many Freudian scholars, and what he calls the Freudian "establishment." In 1980, Masson was hired as the projects director of the Sigmund Freud Archives. In 1981, a series of long articles appeared in the *New York Times* about Masson's novel theories that were based on his research into Freudian analysis and history. (Janet Malcolm's Declaration in Support of Defendants' Summary Judgment Motion, District Court Clerk's Record [hereafter "CR"] 95, at ¶4.)

Shortly thereafter, Masson was fired by the Board of Directors of the Freud Archives. His dismissal was also reported in the *New York Times*. (CR 95, ¶ 4.) Masson's theories about psychoanalysis and his outspoken criticism of Freud and of Freudian scholars and practitioners form much of the backdrop for the *New Yorker* articles and the Knopf book at issue in this case.

Masson was first contacted in October 1982 by defendant Janet Malcolm ("Malcolm"), the author of the articles and book (hereafter collectively "the book"). Malcolm had clipped the *New York Times* articles for possible future reference. (CR 95, ¶ 4.) She telephoned Masson and told him she thought she would like to write about him and the Archives dispute. (*Ibid.*) Masson responded by saying that he had read her book about psychoanalysis, *The Impossible Profession*, and had a "fantasy" that she would call (Supplemental Excerpt of Record in Ninth Circuit [hereafter "Supp. Exc."] at 3:13-21, 15:20 to 16:4). He compared her book to I.F. Stone's work as "journalism at its best." (Supp. Exc. at 3:14-21). He stated: "One doesn't want to avoid either the personal side about me and my whole life nor the side connected with my discoveries...." (Malcolm Decl., CR 95, ¶ 10; Tape 4, Side B at 50:21-24;[1] Supp. Exc. at 4:21-24.)

Masson told Malcolm that as a result of his dismissal by the Freud Archives, his reputation had been damaged, and "I became a *persona non grata*" in the psychoanalytic community. He told her, "[I] can't get a job. Not even in the university.... It's

[1] References to the transcripts of the Masson-Malcolm interviews, which are exhibits to Masson's declaration, CR 65, will be to "Tape" with the number of the tape which appears at the bottom of the page, and the page and line number.

really, I can't get a job."[2] (Supp. Exc. at 5:14 to 6:4; see also Tape 5 at 26:28 ["I could never get another grant now"]; Supp. Exc. at 7:5-9 ["I can't get a job. I can't teach in the university and I can't see patients"]. Publicity would help him sell his future books, which he saw as his only source of income. (Supp. Exc. at 6:4-18.)

Masson said he "should have no control" over what Malcolm wrote about him (Supp. Exc. at 8:4) and stated that "everything I've ever done...should be open." (Supp. Exc. at 10:11-17.) Masson openly discussed his sexual exploits, informing Malcolm (twice) that he had slept with about 1,000 women. (Supp. Exc. at 13:4-25, Supp. Exc. at 14:7-21.)

The first Masson-Malcolm interviews took place in late October and early November, 1982, when Malcolm spent a week in Berkeley, California, and met daily with Masson. (CR 95 at ¶ 6.) Most, but not all, of the interviews were tape-recorded (CR 95 ¶ 7) and Masson has prepared a 1,056-page transcript of those tape-recorded interviews. (See footnote 1 *supra*.) Nearly all the quotations in the book are taken from the tapes, but Masson and Malcolm also had a great many conversations—while walking, driving, and during meals in Berkeley; over the telephone; and during a visit Masson made to Malcolm's home, in New York, in May of 1983—that were not taped but were used in the book. (Masson Depo., Exhibit B to Kenady Decl., CR 96, at 23:5 to

[2] After he was fired by the Freud Archives, Masson filed a $13 million lawsuit against the Archives, alleging, *inter alia*, damage to his reputation. Tape 1 at 28:1-21, Supp. Exc. at 5. His Complaint contained a count for libel and alleged that Masson had been denied a chance at academic-research grants and a teaching position. Masson claimed that his firing by the Freud Archives had made him a "pariah," and that he had lost professional reputation, prestige, and employment opportunities. (Masson Deposition, Ex. B to Kenady Decl., CR 96, at 326:15 to 335:5.)

24:18, 47:4-8, 65:4-8, Supp. Exc. at 20-23.) During some of those conversations Malcolm took notes; during others she did not. (CR 95, ¶ 7.)[3]

Malcolm worked on the book for about eight months, writing it in the spring and summer of 1983. (Malcolm Decl., CR 95, ¶ 8.) The text appeared in December 5 and 12, 1983, issues of *The New Yorker*, as "Annals of Scholarship: Trouble In the Archives" Parts I and II, and was subsequently published in book form by Alfred A. Knopf, Inc. as *In the Freud Archives*.

B. Nature of the Proceedings Below

Petitioner filed his original Complaint on November 29, 1984. (CR 1.) When it turned out that many of the alleged misquotations set out in that Complaint—statements that Masson claimed were defamatory of him and insisted that he had never made—were on tape *verbatim*, his initial Complaint was withdrawn, and those alleged misquotations were never mentioned again. (*See, e.g.*, CR 1, ¶ 15(b), 15(e), and 15(i), alleging that quotations such as "analysis stands or falls with me now" were fabricated. *Compare, e.g.*, Tape 8 at 51:11-12, Supp. Exc. 24 ["analysis stands or falls with me now"] *with* CR 1, ¶ 15(i) (same); Tape 1 at 39:13-20 [analysts felt "this man could single-handedly bring down the whole business"] *with* CR 1 ¶ 15(e).)

[3] Although Masson claims in his Declaration (with no support from the tape transcripts) that Malcolm assured him that "all interviews were on tape" (Petition at 3), he has tacitly conceded that a one-hour interview during his May, 1983, visit to New York was untaped. (Appellant's Brief at 6 in Ninth Circuit; see Masson Decl., CR 100 at 4:2-9.) That New York interview was the source of the notes that contain the alleged misquotations. Masson also admits that he knew that the tape recorder was not in use on many other occasions. (See Masson Deposition citations *supra*.)

Petitioner's *First* Amended Complaint fared no better: it was dismissed because it lacked specificity. (CR 9, First Amended Complaint, and 18, Minutes reflecting dismissal of complaint.) It was replaced by a *Second* Amended Complaint (CR 20), which the court ordered Masson to revise to allege special damages. (CR 30.) In response to Masson's *Third* Amended Complaint, which referred to quotations that were not on tape, defendants filed a Motion for Summary Judgment (CR 61), raising *only* the issue of substantial truth. While that Motion was pending, Masson filed a *Fourth* Amended Complaint.

On August 19, 1986, the District Court dismissed four of the seven allegations of defamation in Masson's Third Amended Complaint in an order granting Partial Summary Judgment on the basis of truth. (See Appendix C to Petition for Writ of Certiorari, hereinafter "Petition".) The court's 1986 Partial Summary Judgment expressly encouraged defendants to make another summary judgment motion raising all available defenses. (CR 76 at 2, fn. 3; Appendix C to Petition at C-2 fn. 3.)

After Masson had had a full opportunity to conduct discovery and had taken the depositions of Malcolm and all others involved in the editorial process, defendants filed their second Motion for Summary Judgment. (CR 92-96.) On August 17, 1987, after a review of the voluminous tape transcripts and briefs, the District Court granted the defendants' Motion on the ground that:

> "each of the alleged defamatory statements is either nondefamatory, substantially true, or a rational interpretation of ambiguous conversations. No clear and convincing evidence exists that would justify a finding

> that the writer or the publishers entertained serious doubts about the truth of the disputed passages."

(CR 114 at 26, Ex. B to Petition at B-28.)[4]

The Ninth Circuit Court of Appeals affirmed the District Court's judgment. Like the District Court, it did not consider Malcolm's notes and it assumed for purposes of the appeal that the quotations were deliberately altered. (895 F.2d at 1537.) And, like the court below it, the Ninth Circuit determined that Masson could not establish actual malice. (*Id.* at 1546.) It held that there could be no inference of actual malice "provided that the fabricated quotations are either 'rational interpretations' of ambiguous remarks made by the public figure...or do not 'alter the substantive content' of unambiguous remarks actually made by the public figure..." (*Id.* at 1539, citations omitted.)

The Court of Appeals derived this legal standard from this Court's opinion in *Time, Inc.* v. *Pape*, 401 U.S. 279 (1970), and from Court of Appeals opinions on this subject, and applied it to the facts at hand. For example, as to the quotation that analysts would one day say of Masson, "after Freud, he's the greatest analyst who ever lived," the court compared it to numerous other "'egotistical and boastful statements'" that were on tape (*e.g.*, "analysis stands or falls with me now" and "[I] could single-handedly bring down the business [of Freudian psychology]") and held that the quotation "actually reflects the substance of Masson's

[4] The District Court explicitly disregarded Malcolm's handwritten and typed notes which contained the "sex, women, fun," "I was like an intellectual gigolo," and "analysts will crawl" quotes *verbatim* in reaching its decision. (App. B to Petition at B-6 fn. 4, B-10 fn. 5, and B-23 to B-24; see Supp. Exc. 28-31, containing the notes.)

self-appraisal." (895 F.2d at 1542.) Similarly, as to the quotation that the Freud House would become a place of both scholarship and "sex, women, fun," there are undisputed tape-recorded statements that Masson and a friend would "pass women on to each other" and have "great parties" at the Freud House, that people would be "calling the police on me [Masson] every, every time I give a party or something," and that he had slept with 1,000 women. (895 F.2d at 1542; see also Supp. Exc. at 13-14, 108.) Based on these taped statements, Masson could not establish actual malice. (895 F.2d at 1542.)

Masson sought rehearing and rehearing en banc. The Petition for Rehearing by the panel was denied 2-1 along the same lines as the appeal itself, and the Petition for Rehearing En Banc was denied unanimously. *No active judge* of the *full* Ninth Circuit Court of Appeals requested a vote on the suggestion for rehearing *en banc*. (App. D to Petition for Certiorari at D-3-4.)

REASONS FOR NOT GRANTING THE WRIT

I. THE NINTH CIRCUIT AND THE DISTRICT COURT CORRECTLY HELD THAT ACTUAL MALICE CANNOT BE INFERRED WHEN THE SUBSTANTIVE CONTENT OF QUOTATIONS IS NOT ALTERED. NO CIRCUIT CONFLICT WAS CREATED.

Petitioner's first argument proceeds from an incorrect premise—that the Ninth Circuit has extended "constitutional protection to calculated falsehood." (Petition at 8.) The two courts below certainly have *not* extended constitutional protection to calculated falsehoods. They have simply applied well-established principles of defamation law to this factual situation.

A. Verbatim Quotations Are Not Required.

First, an admitted public figure such as Masson bears the burden of proving falsity as well as "actual malice." (*Milkovich* v. *Lorain Journal Co.*, U.S. , , 58 U.S.L.W. 4846, 4849-50 (1990); *Philadelphia Newspapers, Inc.* v. *Hepps*, 475 U.S. 767, 775 (1986), citing *New York Times* v. *Sullivan*, 376 U.S. 254, 279-280 (1964).) It is also settled that the deliberate "adoption of one of a number of possible rational interpretations of a document that bristle[s] with ambiguities" is not enough to create a jury issue of actual malice under *New York Times*. (*Time, Inc.* v. *Pape, supra*, 401 U.S. at 290; *Bose Corp.* v. *Consumer's Union*, 466 U.S. 485, 512-13 (1984).)

Second, the failure to quote someone or something verbatim is not, and should not be, prima-facie evidence of falsity. *See generally* Eldredge, *The Law of Defamation* (1978) § 71 at 336-38; *Prosser and Keeton on Torts* (5th ed. 1984) § 116 at 842. The California Supreme Court in *Reader's Digest Assn.* v. *Superior Court*, 37 Cal.3d 244, 261-62 (1984), *cert. denied*, 478 U.S. 1009 (1986) cited both this Court's pronouncements and California law in holding that "all publications must necessarily be permitted some degree of flexibility in their choice of the proper words and phrases to describe the subject at issue."[5] The Court cited *Bose* as "clearly recogniz[ing] the need for a certain degree of literary license when properly applying the *New York Times* standard to the facts of each

[5] This diversity action is governed by California law to the extent that it is not inconsistent with the constitutional protections afforded by this Court in this area. As then-Circuit Judge Kennedy observed in a defamation case arising in California, "California itself tends to conflate common law principles and constitutional doctrine" in defamation cases. (*Koch* v. *Goldway*, 817 F.2d 507, 508-09 (9th Cir. 1987); *see also* Majority opn. in this case, 895 F.2d at 1536-37 (9th Cir. 1989).

case." *Id.* at 261. Similarly, in *Handelsman* v. *San Francisco Chronicle*, 11 Cal.App.3d 381, 386-87 (1970), the plaintiff asserted that a newspaper report about a court complaint could not be fair and true because it did not use the "verbatim language of the complaint." *Id.* at 386. The *Handelsman* court rejected that assertion: "'It is well settled that a defendant is not required in an action for libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified,....'"

Unable to dispute that basic jurisprudence, petitioner argues that quotations must be treated differently. There is no legal basis for such a distinction. As this Court observed in *Pape*, and as the circuit cases dealing with quotations have held, the fact that one is dealing with what someone "said" rather than a description of what someone "did" (*Pape*, 401 U.S. at 285-86) furnishes no reason to depart from the settled rule that verbatim accuracy is not required as long as the substance is not changed. Changes that do not "alter the substantive content" are not actionable. *Hotchner* v. *Castillo-Puche*, 551 F.2d 910, 914 (2d Cir. 1977), *cert. denied sub. nom. Hotchner* v. *Doubleday & Co.*, 434 U.S. 804 (1977); *see also Meeropol* v. *Nizer*, 381 F.Supp. 29, 35 (S.D.N.Y. 1974), *affirmed*, 560 F.2d 1061 (2d Cir. 1977), *cert. denied*, 434 U.S. 1013 (1978) ["minor fictionalizations or approximations of conversations that may have taken place" are non-defamatory and do not demonstrate actual malice]; *Mahoney* v. *Adirondack Publishing Co.*, 71 N.Y.2d 31, 517 N.E.2d 1365, 1370 (1987) [alleged misquotation of high school football coach portraying him as yelling epithets at quarterback "more the product of misperception than fabrication"; no actual malice].

Hotchner is by no means the only circuit court support for the Ninth Circuit's correct holding here. In *Ryan* v. *Brooks*, 634 F.2d 726, 733 (4th Cir. 1980), the Fourth Circuit held that it

"would not find proof of malice in [defendant's] use of slightly stronger language than his source's." (*Id.* at 733, relying on *Time, Inc.* v. *Pape, supra,* 401 U.S. at 290.) Although the defendant in *Ryan* reported that the plaintiff said salary kickbacks had been "extorted" from Southern Bell executives, the plaintiff's actual words were "forced political contributions." *Id.* at 729. The Fourth Circuit held, "Nor can the fact that Brooks changed the words of his sources create a jury issue on the question of malice. The historian's job is not to copy statements exactly as written in a secondary source, but to interpret and rework them into the whole." (*Id.* at 733.)

Similarly, in *Southard* v. *Forbes, Inc.*, 588 F.2d 140 (5th Cir. 1979), *cert. denied,* 444 U.S. 832 (1979), the quotations attributed to the plaintiff "were not verbatim quotes but a 'distillation' of comments he made" to the reporter. The reporter's transcript and notes "showed that Southard [the plaintiff] used similar, but less emphatic, language." (*Id.* at 142, see especially footnote 1.) The Court found there was no defamation. (*Id.* at 145 fn. 9.)

The Ninth Circuit's ruling is fully supported by California law, too. In *Fletcher* v. *San Jose Mercury News,* 216 Cal.App.3d 172, 188-190, 264 Cal. Rptr. 699 (1989), the plaintiff contended that malice was demonstrated by the fact that the reporter "fabricated information." An interviewee [Van Nus] was quoted as saying, "There's absolutely no doubt in my mind that Claude Fletcher was involved in Weathermaster..." Van Nus testified at trial that he *did* have "doubt in my mind." The reporter's notes read, "'There is no, absolutely'—I have 'doubt in my mind that Claude Fletcher was involved in Weathermaster...'" Despite the reporter's equivocal notes and Van Nus's flatly contradictory testimony, the California Court of Appeal held that there was no clear and convincing evidence of actual malice.

"[T]he Van Nus quote was not so improbable as to support the inference that Herhold [the reporter] had deliberately falsified Van Nus's remarks." *Id.* at 189.

The sole case upon which Masson relies to support his theory and to argue a circuit conflict is *Carson* v. *Allied News Co.,* 529 F.2d 206, 213 (7th Cir. 1976), which involved facts radically different from those of this case. In *Carson,* there was "[n]othing in the present record" which "len[t] any support whatsoever, or even relate[d] to," the published statement. The purported quotations were "wholly imagined," were not taken from any actual interviews, and were contradicted by *all* the evidence. (*Id.* at 212-13, and fn. 15.) There was nothing to interpret, rationally or otherwise, in *Carson*; there had been no interviews. Since there had been *no statements* by Mr. Carson, the quotations attributed to him were, obviously, false. The Ninth Circuit here *accepted Carson* as good law (895 F.2d at 1539), but found it inapplicable, because in *Masson* there are 1,056 pages of tape transcripts replete with statements very similar to the untaped ones. The ruling in *Masson* simply does *not* conflict with *Carson.*

The real gist of Masson's petition is his implicit suggestion that a writer can never depart from "full direct quotation of the words of the source" (*Pape, supra,* 401 U.S. at 286) without risking liability. This Court rejected such a Draconian rule in *Pape* and should reject it again here.

If Masson's case—where all but a few of the quotations in a 48,500-word book are on 40 hours of tapes, and the rest are in the reporter's notes—is enough to require resolution of his claim by a jury, then whenever a public figure has second thoughts about what he or she said, or about how it looks in print, the federal courts will be burdened with jury trials devoted to word-by-word comparisons of quotations against notes and tapes of interviews. That has never been the law and should not be made the law. (See,

e.g., Contemporary Mission, Inc. v. *New York Times, Co.*, 842 F.2d 612, 625-26 (2d Cir. 1988), *cert. denied,* U.S. , 109 S.Ct. 145 (1989) [reporter's notes justify summary judgment; no evidence suggested she knowingly or recklessly mischaracterized statements in them; even if she did misquote, insufficient evidence of actual malice]; *Tate* v. *Bradley*, 837 F.2d 206 (5th Cir. 1988) [summary judgment granted to defendant where plaintiff alleged misquotation; held, misquotations not defamatory].)[6]

Under plaintiff's proposed strictures, a writer *must* tape all interviews and can either serve as a stenographer—in this case simply reprinting the entire 1,056-page transcript of the Masson-Malcolm interviews, replete with all of the "uhs," "yeahs," and the like—or be placed "virtually at the mercy of the unguided discretion of a jury." (*Pape, supra,* 401 U.S. at 291.) Newspapers and magazines could only run full, verbatim "question and answer" interviews, and might end up looking like deposition transcripts. That is not where this Court has struck the constitutional balance (*Pape, id.*) and not where it should be set. The First Amendment requires "breathing space" (*New York Times* v. *Sullivan* (1964) 376

[6] Petitioner and the dissenting member of the Ninth Circuit panel suggest that Janet Malcolm has committed some sort of breach of journalistic ethics. Respondents respectfully suggest that this allegation is both unfounded and irrelevant. First, there is no ethical requirement that all interviews be taped, and the dissent concedes, "[I]f a reporter takes notes and is unable to catch every word, she will be protected from liability even though she was negligent in failing to use a tape-recorder or in double-checking her source." Dissenting opinion, 895 F.2d at 1558, citing *Harte-Hanks Communications, Inc.* v. *Connaughton,* U.S. , 109 S.Ct. 2678, 2696, 105 L.Ed.2d 562 (1989). Malcolm had either tapes or notes for every alleged misquotation. Second, "Today, there is no question that public figure libel cases are controlled by the *New York Times* [actual malice] standard and not by the professional standards rule, which never commanded a majority of this Court." *Harte-Hanks, supra,* U.S. , 105 L.Ed.2d 562, 576.

U.S. 254, 272), and that is no less true with regard to reports of what someone *says* than with regard to accounts of what someone *does*. *Pape, supra,* 401 U.S. at 285-86.

B. Actual Malice Cannot Be Shown When Quotations Do Not Alter the Substantive Content of Undisputed Remarks.

It follows from Masson's failure to show that the quotations altered the substantive content of his undisputed remarks that, *a fortiori,* he cannot show actual malice.

As this Court observed in *Bose Corp.* v. *Consumers Union of U.S. Inc.*, 466 U.S. 485, 511 (1984), "there is a significant difference between proof of actual malice and mere proof of falsity." Such proof, here as in *Bose,* is completely lacking. If the quotations reported did not alter the substantive content of remarks that Masson admittedly made, there can be no argument that Malcolm had knowledge of falsity when she published the articles and book. *Bose Corp., supra,* 466 U.S. at 490, citing *New York Times* v. *Sullivan, supra,* 376 U.S. 254, 279-280; *see also Janklow* v. *Newsweek, Inc.*, 788 F.2d 1300, 1306 (8th Cir. 1986), *cert denied,* 479 U.S. 883 (1986) ["this Court will not make editorial judgments about specific word choice in order to portray a plaintiff in the best possible light"]. Unless actual malice can be shown from insubstantial departure from verbatim quotations—and no court has ever held that it can be—petitioner has failed to state a claim (on his fifth attempt).

Petitioner suggests that "Malcolm *knew* Masson had not made the defamatory statements she attributed to him because she knew exactly what he had actually said, and had tape recordings of the conversations." (Petition at 13.) This contention fails both factually and legally.

First, there is no evidence of actual malice; quite the contrary. Malcolm's declaration states, "I quoted Mr. Masson accurately, I presented him as he presented himself to me, and...I invented nothing." CR 95 at ¶ 10. The tapes and her notes back this up. Her notes document virtually verbatim the challenged quotations. (See Exhibit B to CR 95, four pages of typewritten notes containing the quotations, Supp. Exc. 28-31.) In sharp contrast to *Carson*, where the writer claimed his quotes were "simply a logical extension of what must have gone on" from facts the writer read in someone else's article (529 F.2d at 212), Malcolm here has notes of a conversation which Masson *admits* took place (Supp. Exc. 28-35), and 40 hours of tapes as well. Masson's analogy to *Carson* fails.

Second, under *New York Times* v. *Sullivan, supra*, 376 U.S. 254, the public figure plaintiff must show knowledge of *falsity* and not just knowledge of a few changed words. Even if one assumes (as the two lower courts did, focusing on the tapes and disregarding the writer's notes in their analysis) that Malcolm deliberately altered Masson's words, proof of knowing *falsity* is required. As this Court recently held in a slightly different context, public figures "must show that such [false] statements were made with *knowledge of their false implications* or with reckless disregard of their truth." (*Milkovich* v. *Lorain Journal, supra,* U.S. , , 58 U.S.L.W. at 4851 (1990), emphasis added.) There is no evidence that defendants were aware of any false implications created by the quotations at issue here. Indeed, there was nothing false about them. Petitioner has failed to make the required showing in two courts. He cannot.

The Seventh Circuit (author of the *Carson* opinion) recently rejected a simplistic view of the actual malice doctrine similar to the one advanced by Masson here. In *Saenz* v. *Playboy Enterprises, Inc.*, 841 F.2d 1309, 1318 (7th Cir. 1988), the Court

(per Chief Judge Bauer) held:

> "Not only must the plaintiff establish that the statement is susceptible of a defamatory meaning which the defendants knew to be false or which the defendants published with reckless disregard for its potential falsity, but also that the defendants intended to imply or were reckless toward the implications. Evidence of defamatory meaning and recklessness regarding potential falsity does not alone establish the defendant's intent."

Applied here, Janet Malcolm did not act with actual malice because in those few instances where quotations are not verbatim, the slight changes *in no way alter the substantive content* of what Masson said. Actual malice could be found only if Malcolm knowingly changed the substance of what Masson said, with intent to create defamatory implications. She did not.

Petitioner commends the "straightforward" approach taken in *Bindrim* v. *Mitchell*, 92 Cal.App.3d 61 (1979), *cert. denied*, 444 U.S. 984 (1979), but again a comparison of the taped encounter session there and the writer's presentation of it reveals no similarity at all. (*Id.* at 70-71.) *Bindrim* is a case in which there was a complete alteration of the substance of what the plaintiff said; *Masson* is not. In any event, the far more recent case of *Fletcher* v. *San Jose Mercury News, supra*, 216 Cal.App.3d at 188-90, found no actual malice in a case of alleged misquotation involving stronger facts for the plaintiff than *Masson*. *Fletcher* is more reflective of California law than *Bindrim*.

Masson contends that the Ninth Circuit's opinion conflicts with *Dunn* v. *Gannett New York Newspapers*, 833 F.2d

446 (3d Cir. 1987). But, in fact, the Ninth Circuit properly *followed Dunn* in holding that "rational interpretations" of ambiguous remarks are protected.

In *Dunn*, the Mayor of Elizabeth, New Jersey, blamed some of the city's litter problems on immigrants. (*Id.* at 448.) A Spanish-language newspaper summarized his remarks with a headline that when translated into English read: "Elizabeth Mayor on the Attack: Calls Hispanics 'Pigs.'" Relying on *Time, Inc.* v. *Pape, supra*, 401 U.S. 279, and this Court's later decision in *Bose* v. *Consumer's Union*, 466 U.S. 485, 512 (1984), the Third Circuit held that the headline was "a rational interpretation of remarks which bristled with ambiguities." (*Id.* at 452.)[7] The Ninth Circuit properly relied on *Dunn* in this case. (895 F.2d at 1538-39, 1541-44.)

II. THE ALLEGED MISQUOTATIONS EITHER DO NOT ALTER THE SUBSTANTIVE CONTENT OF UNDISPUTED STATEMENTS OR ARE RATIONAL INTERPRETATIONS OF AMBIGUOUS REMARKS.

Analysis of the challenged quotations—undertaken by both the District Court and the Ninth Circuit but conspicuously avoided in Masson's Petition for Certiorari—reveals that none of the alleged misquotations altered the substance of what Masson said on tape.

[7] Petitioner argued below that *Dunn* could somehow be distinguished on the ground that it involved a translation from Spanish to English. The Ninth Circuit properly made short work of that contention: "The problems created by summarization obviously are not unique to translation." (895 F.2d at 1539 fn. 2.)

A. The Quotation "I Was Like an Intellectual Gigolo" Accurately Reflects Masson's Account of His Relationship with Dr. Kurt Eissler and Anna Freud.

Masson is quoted in the book as saying that a former lover found him to be a "social embarrassment anywhere else, though you do fine in your own room." Masson then says, "And, you know, in their way, if not in so many words, Eissler and Anna Freud told me the same thing. They liked me well enough 'in my own room.' They loved to hear from me what creeps and dolts analysts are. I was like an intellectual gigolo—you get your pleasure from him, but you don't take him out in public." (895 F.2d at 1540; see CR 101, Exhibit 19, Supp. Exc. 56.) He then continues with an account of a conversation with Anna Freud.

Janet Malcolm's notes—which were not considered by either the District Court or the Ninth Circuit for purposes of summary judgment—contain the disputed quotation "I was like an intellectual gigolo. You get your pleasure from him," followed by the phrase, "I was like a very expensive cat—an elegant cat—that was dangerous to let out of the house."[8] (Respondents' Appendix

[8] Masson on tape twice compared his relationship to Eissler and Anna Freud to a dog's, rather than a cat's. He quoted Anna Freud as saying: "You don't know what it's like having Masson in my house. It's like my dog." (Tape 1 at 37:5-6, Respondents' Appendix [hereafter "Resp. App."] hereto at 7.) Moments later, Masson said that Eissler said he would always get complaints from other analysts, "Leash your maniac Masson. Please. You know, you don't know what you've unleashed on the analytic world." Tape 1 at 38:26 to 39:8, Resp. App. at 7. Respondents' Appendix to this Brief in Opposition sets out the content of the book passages, Malcolm's notes, and selected tape transcript passages relevant to those allegations of misquotation mentioned in Masson's Petition. A similar Appendix was prepared at the District Court's suggestion and appears at CR 109.

[hereafter "Resp. App."] at 3.) Malcolm testified at deposition that "when he actually used that term" in New York "it connected very well with all of the other things he had said about the relationship [with Eissler and Anna Freud] and that it was a good summary of what he had told me before about what their relationship had been like." (Supp. Exc. 65:15-19; see also Supp. Exc. 57:20 to 59:24, 60:19 to 61:25, 62-63.)

Even if Malcolm's notes are disregarded, Malcolm could not have entertained serious doubts about the truth of the description. Numerous remarks in the tape transcripts bear out the description, and show that it did not alter the substantive content of Masson's undisputed tape-recorded statements.[9] It is also clear that, as the District Court correctly ruled, the quotation was a rational interpretation of sometimes ambiguous remarks. (App. B to Petition at B-11.] "The descriptive term 'intellectual gigolo,' as used in this context, simply means that Masson's views were privately entertaining, but publicly embarrassing to Freud and Eissler." (App. B at B-11; see 895 F.2d at 1540-41.

The tape transcripts—which, of course, are not disputed—contain Masson quoting a former lover, "You're just a social embarrassment anywhere else, but you do fine in your own room." (Resp. App. at 4.) Immediately following that statement Malcolm remarked to Masson, "You said something which I was just reminded of when you were talking, when you quoted that girl who said she liked sleeping with you but she didn't want to have anything else to do with you, when you said something about how the analysts thought you were, uh, that you were this private asset

[9] Space does not permit a full recitation in this Brief of the relevant taped statements, but numerous examples are set forth in Respondents' Appendix, which compares the book passages, notes and tapes on those quotations mentioned in the Petition.

but a public liability." Masson agreed: "Yes, yeah, that's true, yeah." (*Id.* at 5.) He thus agreed that analysts, including Dr. Eissler and Anna Freud, regarded him much the way his former lover did: as someone who could please them in private, but embarrass them in public. This is exactly the sense conveyed by the disputed passage.

On another occasion, during a tape-recorded interview with Malcolm, Masson quoted his benefactor Dr. Eissler as saying:

> "'Well, you charm everybody. Yes, you charm everybody, it's true.... You charmed me. You charmed everybody. You charmed Anna Freud.'"

Masson then agrees:

> "I had the charm of the impostor sort of,...I had managed to worm my way into the graces of Eissler and Anna Freud and Muriel Gardiner through charm and this had worked on them, and they had like fallen into a spell. I had mesmerized them, and then taken away all these valuable letters and rushed off and published them, to damage and destroy psychoanalysis..."

(Resp. App. at 8-9.) In yet another taped interview, Masson mentioned the "natural" rumor that he had "literally" seduced Anna Freud, and the comments of analysts that he was "the darling of Anna Freud and Eissler," which he said was "true". (Resp. App. at 6-7.)

Masson said that other analysts felt he was a "private

asset but a public liability." (Resp. App. at 9.) Masson described the relationship between junior and senior analysts this way: "Suck stories. They're great suckers, and it's a question of who can suck the most.... Oh God, did I go through it." (Resp. App. at 10.) Masson said he and Eissler "would talk about anything, but we would never go outside and talk about it." (Resp. App. at 13.) Masson boasted of his ability to "seduce" other analysts and, for that matter, virtually everyone else. (Resp. App. at 14-16.) He described his elderly benefactor Dr. Eissler as "very easily taken in." (Resp. App. at 18.)

Given the close resemblance between the challenged passage and the tape-recorded interviews, no reasonable jury could conclude that Malcolm entertained serious doubts about the truth of what she wrote.

B. The Quotation "Sex, Women, Fun" Accurately Reflects the Substance of Masson's Remark That He and a Colleague Would "Pass Women On to Each Other" at the Freud House.

Masson's assertion that he was libelled by the reference to his plans for the Freud House (he would turn it into a place of "sex, women, fun," as well as a place of scholarship), is without merit. Again, the verbatim quotation appears in Janet Malcolm's notes. (Resp. App. at 21.) Even if the notes are disregarded, the tapes are full of Masson's tales about his sexual exploits and his unusual plans for the Freud House (Maresfield Gardens).

Masson said that he and a colleague, Masud Khan, "were to stay with each other and we were going to pass women on to each other, and we were going to have a great time together when I lived in the Freud house. We'd have great parties there and we were—going to really, we were going to live it up." (Resp. App.

at 22.) He predicted, "They're going to be calling the police on me every, every time I give a party or something," "I could have had some fun," and "It would take...an act of Congress [to] get me out of Anna Freud's house. And I could have a lot of fun while they tried." (App. C to Petition at C-7.)

Masson told Malcolm, "I was a very promiscuous person. Sexually. Until quite recently, I mean, all over the world." (Resp. App. at 23.) Finally, he said (twice) on tape that he had slept with about 1,000 women. (Resp. App. at 23-26.) No reasonable fact-finder could find falsity—much less actual malice—in the face of this evidence.

C. The Quotation "Analysts will crawl...they will say that Masson is a great scholar...after Freud, he's the greatest analyst who ever lived" Accurately Reflects the Tapes.

Masson claims he was misquoted in a passage in which he described the reaction he expected from analysts to his book *The Assault on Truth*, which had recently been accepted by a major publisher. (*In the Freud Archives*, page 162; Resp. App. at 28.)

The only disputed portion of the passage—"analysts will crawl...They will want me back, they will say that Masson is a great scholar, a major analyst—after Freud, he's the greatest analyst who ever lived"—appears in Janet Malcolm's notes, which were taken during Masson's visit to New York to promote *The Assault on Truth*. (Resp. App. at 29.) Neither the District Court nor the Ninth Circuit, however, found it necessary to consider those notes in order to reject Masson's allegations. The District Court observed that "many similar egotistical statements appear in tape--recorded portions of the interviews." App. B at B-24-25. As the Ninth Circuit commented, in affirming the District Court's finding

on this quotation, "The purportedly fictionalized quotation actually reflects the substance of Masson's self-appraisal." 895 F.2d at 1542.[10]

For example, Masson said *on tape*, "For better or for worse, analysis stands or falls with me now." He claimed in his first Complaint (CR 1, ¶ 15(i)) that this was a misquotation, only to be confronted with a tape that proved he had in fact said those very words. (Resp. App. at 30.)

On numerous occasions during the tape-recorded interviews, Masson levelled harsh and shrill criticisms of the psychoanalytical establishment which were very similar to those in the challenged passage, predicting that his book would have a cataclysmic effect. He trumpeted the importance of his proclaimed discoveries in words substantially the same as the disputed passage. For example, Masson warned, "Analysis is either going to face this kind of stuff that I've found, which are historical documents, and change or they're going to deny them and they're going to become destroyed." (Resp. App. at 30.) He claimed, "I hold a position that no other analyst holds, including, alas, Freud.... [I]t's me. It's me alone." (Resp. App. at 31.) He claimed that analysis "started in 1895" (with Freud) and "it died in 1982" with Masson's discoveries. (Resp. App. at 31.)

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[10] Interestingly, in another article published in the *San Francisco Chronicle* two months after *The New Yorker* articles, Masson says essentially the same things that Malcolm quotes him as saying to her: "In his more expansive moments, Masson says the discoveries he made in this scholarly trove one day will give him a higher place and greater honor in the history of psychoanalysis than such giants as Carl Jung and Alfred Adler. In his meaner moments, Masson speaks of the psychoanalytic establishment abasing itself before him, pleading for him to return to the fold." "An Ex-Disciple on the Attack," *San Francisco Chronicle*, February 13, 1984, at 16. Masson apparently never challenged this description of his statements, which is entirely consistent with the disputed quotations.

As to *his* book, which was the subject of the disputed quotation, Masson had predicted, on tape, even *before* his own book was accepted by a major publisher,

> "Yeah, so I don't have a publisher, and my feeling is if I don't get one, fuck them. I'll let the book come out in Europe and they'll be sorry, you know, it'll create all this storm and a lot of attention, and then they'll come to me and say, 'Well, we'll pay you this, that and the other,' and then I can pick and choose."

(Resp. App. at 33.) He also predicted that his book "spells the beginning of the end of psychoanalysis...I think that this book really is, uh, it's the end for them." (Resp. App. at 35.)

Masson said that other analysts felt, "This man could single-handedly bring down the whole business" of psychoanalysis. (Resp. App. at 35.)[11] He revelled in talking about how much publicity would precede his book—predicting the major reaction that analysts would have to his book, and discovering "the wedge that's going to topple psychoanalysis." (Resp. App. at 46-49.)

Given all of this, the Ninth Circuit and the District Court correctly concluded that no reasonable jury could find clear and convincing evidence that Malcolm entertained serious doubt about the truth of the passage in question.

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[11] Masson contended in his initial Complaint [CR 1, ¶ 15(e)] that this passage was a "fabrication," but it, too, was in the interview tapes verbatim.

III. THE NINTH CIRCUIT FOLLOWED ANDERSON v. LIBERTY LOBBY AND, IF ANYTHING, GAVE MORE DEFERENCE TO PETITIONER'S ALLEGATIONS THAN IS REQUIRED BY THIS COURT'S RULINGS REGARDING SUMMARY JUDGMENT.

A. The Courts Properly Followed Anderson.

Petitioner argues, in passing, that the Ninth Circuit "resolved a factual dispute against Masson" contrary to *Anderson* v. *Liberty Lobby*, 477 U.S. 242 (1986). (Petition at 17.) But the record shows that both the Ninth Circuit and the District Court relied solely on the undisputed transcripts of the tape-recorded interviews in reaching their decisions. 895 F.2d at 1541 [assuming Masson had not used the words "intellectual gigolo"]; App. B to Petition at B-6 fn. 4. Both courts disregarded Janet Malcolm's notes, which contained the disputed quotations verbatim (*ibid.*).

Under *Anderson*, a public figure libel plaintiff must furnish "clear and convincing evidence" of "actual malice" to avoid summary judgment. *Anderson*, 477 U.S. at 254. Moreover,

> "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... It follows...that if the factual context renders [plaintiff's] claim implausible—if the claim is one that simply makes no...sense—[a plaintiff] must come forward with more persuasive evidence to support their claim than would otherwise be necessary."

Matsushita Elec. Ind. Co. v. *Zenith Radio*, 475 U.S. 574, 586-87 (1986).

Masson has produced no evidence to suggest that the Ninth Circuit did not follow *Anderson* and *Matsushita*. His claim that the Ninth Circuit disbelieved his denial of the "I was like an intellectual gigolo" quotation is unfounded: both the Ninth Circuit and the District Court *assumed* that Masson did not use the words "intellectual gigolo" to describe how Dr. Eissler and Anna Freud felt about him. 895 F.2d at 1541; District Court Opn., App. B to Petition at B-10, fn. 5. The two courts below also ignored Malcolm's notes in considering other disputed quotations. (App. B to Petition at B-6 fn. 4.)

B. The Courts Could Have Considered Malcolm's Notes, But Did Not.

Instead of resolving any disputes against Masson, the two courts have, if anything, been exceptionally deferential to him in disregarding Malcolm's notes, despite the utter implausibility of Masson's contention that the notes were fabricated. The notes could have been considered because the challenge to them is implausible and "makes no...sense." *Matsushita*, 475 U.S. at 587.

Malcolm has stated that the notes were taken from statements that Masson made during a visit to her home in New York in May, 1983. CR 95 ¶¶ 14, 19. Masson confirms that he made the visit. He was present in New York to address and exhort his publisher's salespeople about his new book. Masson Decl., CR 100, ¶ 5 at 3. He concedes there was an hour-long discussion with Malcolm during this visit. *Id.*, ¶ 5, at 4.

Moreover, Masson admits that he stayed up all night reading Dr. Eissler's book about Tausk before the conversation at issue (Masson Depo., Exhibit B to Kenady Decl., CR 96, at 65:24

to 66:28, Supp. Exc. at 33-34), and Malcolm's notes contain a reference to Dr. Eissler's book about Victor Tausk. (Exhibit B to CR 95 at 1, Supp. Exc. 28.) In addition, in a letter Masson wrote to Malcolm very shortly after his visit, on May 17, 1983, he referred to "the Schur material," which was also referred to Malcolm's notes. (Compare Ex. 1 to CR 100, Supp. Exc. at 32, with Notes, Ex. B to CR 95, at 2, Supp. Exc. at 29.) The letter also referred to his desire for "vengeance" and "vindication," the gist of the disputed quotations. See Supp. Exc. 28, 32.

Masson does *not* dispute other passages in Malcolm's book that are taken from these same notes. Indeed, the passage at page 14 of the book (Supp. Exc. at 37) contains *unchallenged* quotations (referring to the profound consequences his book would have) that are taken from the *same page* of the notes. (Supp. Exc. 28.) His allegation that the notes are fabricated is "implausible." He was obligated to present significantly probative evidence, "more persuasive evidence to support [his] claim than would otherwise be necessary." *Matsushita, supra*, 475 U.S. at 587, 89 L.Ed.2d at 552. He has not, and he cannot. The Ninth Circuit—instead of resolving factual conflicts against Masson—assumed the truth of an implausible claim that the notes were fabricated.

Finally, Masson argues, in passing, that the *Anderson* standard should not apply in this case. (Petition for Certiorari at 19.) Masson's contention is frivolous. He conceded below that the *Anderson* and *New York Times* "clear and convincing" evidentiary standard applies to the actual malice determination at the summary judgment stage. (Brief for Appellant in Ninth Circuit at 9, citing *Anderson*.) Petitioner's last-minute argument that *Anderson* does not apply to this case seems a concession that he cannot meet the

standard.[12]

IV. THE NINTH CIRCUIT'S DISCUSSION OF THE INCREMENTAL HARM DOCTRINE IN DICTUM AS A FIFTH GROUND FOR AFFIRMANCE DOES NOT WARRANT THIS COURT'S REVIEW ON THE MERITS.

Petitioner finally seizes upon dictum in the Ninth Circuit's decision, which served as a fifth ground for affirmance, to contend that there is a circuit conflict which needs resolution. (Petition for Certiorari at 20.) Given that this part of the Ninth Circuit's opinion was dictum and there were four other grounds that supported the Ninth Circuit's resolution of the issue, the contention is without merit.

The Ninth Circuit disposed of Masson's allegations on the "I was like an intellectual gigolo" quotation on five grounds: (1) the District Court correctly found that the passage was a rational interpretation of ambiguous comments; (2) the quotation did not alter the substantive content of Masson's description of himself as a "private asset but a public liability" to Dr. Eissler and Anna Freud; (3) there was no actual malice; (4) the quotation is not defamatory; and (5) the quote is "non-defamatory under the 'incremental harm branch' of the 'libel-proof' doctrine." (895 F.2d

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[12] Petitioner claims a "conflict among the circuits" on the issue of whether "the element of falsity must be established by clear and convincing evidence or by a preponderance of the evidence." *Harte-Hanks, Inc.* v. *Connaughton*, 491 U.S. , 109 S.Ct. 2678, 2682 fn. 2, 105 L.Ed.2d 562, 572-73 fn. 2; Petition for Certiorari at 19. Neither party has ever briefed that issue in this case and neither court below discussed the issue. Petitioner simply seeks to bootstrap his way into a circuit conflict on an issue that does not exist in this case.

at 1541.) Petitioner asserts that adoption of the "incremental harm branch" of the "libel-proof doctrine"—a fifth ground for affirmance, and one not necessary to the court's decision—creates a conflict with *Liberty Lobby* v. *Anderson*, 746 F.2d 1563, 1568 (D.C.Cir. 1984), *reversed on other grounds*, 477 U.S. 242 (1986).

It is respectfully suggested that this alleged technical conflict fails to present the "special and important reasons" necessary for certiorari review. (Supreme Court Rule 10.1.)

First, the "libel-proof doctrine" discussion was dictum, a fifth ground for affirmance as to only one quotation. Even if this Court finds the issue an important one, the granting of review on the issue would serve no purpose. Indeed, this Court unanimously denied certiorari in *Guccione* v. *Hustler Magazine, Inc.*, 800 F.2d 298, 303-04 (2d Cir. 1986), *cert. denied*, 479 U.S. 1091 (1987), where the same issue was *directly* presented by the Second Circuit's approval of the libel-proof doctrine.

Second, the issue can be resolved under California law. The California Supreme Court in *Reader's Digest Assn.* v. *Superior Court, supra*, 37 Cal.3d at 266, noted the insignificance of three sentences in a long article that contained much other harmful material. This suggests that the California Supreme Court would adopt the "incremental harm doctrine" in a case such as this one, where only a handful of passages in a 48,500-word book are challenged, and many quotations which would have an equal or greater impact on the reader are not challenged.[13]

[13] The Court in *Liberty Lobby* v. *Anderson, supra*, 746 F.2d at 1568-69, *reversed on other grounds*, 477 U.S. 242, regarded the then-existing decisions which had adopted the libel-proof doctrine as "all decisions of federal courts interpreting state law in the absence of state court guidance." Given the California state law origin and impact of the majority decision on this point, any alleged error (and we do not believe there was any) can be and should be corrected by the California Supreme Court, not this Court.

Finally, this case presents a clear example of the need for the incremental harm doctrine. Masson filed a $13 million lawsuit against the Freud Archives in *1981* alleging that he had become "persona non grata" and a "pariah" when he was fired by the Archives, two years before Malcolm's article. (Supp. Exc. at 5-6; Masson Depo., Ex. B to CR 96, at 326:15 to 333:19, especially 332:28.) He has been permitted to file four amended complaints and he still does *not* challenge numerous quotations that paint him in a most unappealing light. He therefore has no claim to more federal court time. "Instead, the claim should be dismissed so that the costs of defending against the claim of libel, which can themselves impair vigorous freedom of expression, will be avoided." *Guccione* v. *Hustler Magazine, Inc., supra*, 800 F.2d at 303.

CONCLUSION

This lawsuit was brought by an outspoken public figure who had sought a forum for his harsh criticism of former colleagues in the field of psychoanalysis. Stripped to its essence, it is a case in which petitioner blames a serious writer and responsible publishers for accurately reporting his own ill-advised words. This is not a case, like *Carson*, where an interview was fabricated and a person was maligned. This is, in the words of then-Circuit Judge Kennedy, "the precise sort of contest society can endure without redress from the courts." *Koch* v. *Goldway*, 817 F.2d 507, 510 (9th Cir. 1987).

The Ninth Circuit scrupulously protected reputational interests in this case by holding that public figures should be quoted in a way that does not alter the substance of what they have said. Two courts have now combed through 1,056 pages of tape transcripts, examined the few passages Masson challenges in a

48,500-word book, and, even without considering the reporter's notes, have found no evidence of actual malice. Their decisions should stand.

Dated: July 18, 1990.

RESPECTFULLY SUBMITTED,

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RESPONDENTS' APPENDIX

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RESPONDENTS' APPENDIX

This evidentiary appendix compares passages from Janet Malcolm's book *In the Freud Archives* to Janet Malcolm's notes (Exhibit B to Janet Malcolm Declaration, District Court Clerk's Record No. 95; Supplemental Excerpt of Record in Ninth Circuit Court of Appeals at 28-31) and the transcripts of the Masson-Malcolm interview tapes. Those transcripts, which were prepared by petitioner, appear as Exhibits to the Declaration of Jeffrey Masson, Clerk's Record ("CR") Document No. 65.

Respondents prepared a similar appendix at the suggestion of the District Court. That appendix appears at Clerk's Record No. 109 in the District Court Record.

THE BOOK

"Wendy was even worse, in her way, though I thought, Well, at least she's a woman. I remember once trying to touch her, and she looked at me and said, 'Frankly, I don't think you're man enough to have an affair with me.' I ran into this sort of thing everywhere I went at Harvard. Then I met a rather attractive older graduate student, and I had an affair with her. One day, she took me to some art event, and she was sorry afterward. She said, 'Well, it's very nice sleeping with you in your room, but you're the kind of person who should never leave the room—you're just a social embarrassment anywhere else, though you do fine in your own room.' And, you know, in their way, if not in so many words, Eissler and Anna Freud told me the same thing. They liked me well enough 'in my own room.' They loved to hear from me what creeps and dolts analysts are. I was like an intellectual gigolo—you get your pleasure from him, but you don't take him out in public. Do you know what Anna Freud once said to me? She said, 'If my father were alive today, he would not become an analyst.' I swear, those were her words. No, wait. This is important. I said that to *her*. I said, 'Miss Freud, I have the feeling that if your father were alive today he would not become an analyst,' and she said, 'You are right.'"

(*In the Freud Archives*, pages 37-38.)

MALCOLM'S NOTES

It was a folie a trois—me and Af and E. I was a fantasy of AF's. She liked to hear that analysts are such creeps, dolts, etc. I was giving her a good time. I was like an intellectual gigolo. You get your pleasure from him. I was like a very expensive cat—an elegant cat—that was dangerous to let out of the house.

(Exhibit B to Malcolm Declaration, CR 95, Supplemental Excerpt of Record in Ninth Circuit at 30)

THE TAPES

MASSON: Right, just before, yeah. And, and that's one of the reasons I moved, I was just, you know, I was just really shocked by this and I didn't know what to make of it and, I mean I knew, and then I met Wendy and she was even worse, and I thought: Well, at least she's a woman, you know. [laughs] I remember once trying to touch her and she looked at me and she said, "I don't think you're man enough to have an affair with me, young man." And err, you know, sort of trembled and I don't know, I just met this everywhere I went, and then I met this Thornton Wilder's niece, who's a rather attractive older woman, graduate—

MALCOLM: I, oh, no, no, no. I met his sister.

MASSON: Ah ha. And she was rather sexy and I had an affair with her and she once took me to some event, art event, and she was very sorry, and she said, "Well, you know, it's nice sleeping with you in your room but you're the kind of person who should never leave the room." [laughs]

MALCOLM: [laughs]

MASSON: "You're just a social embarrassment anywhere else, but you do fine in your own room." And that, I mean, there was a lot of that at Harvard, you know, there really was.

(Tape 7 at 5:5-25.)

MASSON: And I don't think for one minute he's forgotten. I

mean, he knows it. He, he's just terribly embarrassed. He doesn't want in any way to be associated with, I guess, you know, for an analyst, it could be dangerous, possibly—

MALCOLM: Yeah, well, you know, you said something which I was just reminded of when you were talking, when you quoted that girl who said she liked sleeping with you but she didn't want to have anything else to do with you, when you said something about how the analysts thought you were, uh, that you were this private asset but a public liability.

MASSON: Yes, yeah, that's true, yeah.

MALCOLM: So, there was that kind of double standard, like between team-mates, you know, you can [???] horse around together in the privacy of your own home but—

MASSON: Janet, can you hold on one-half second. I'm blocking someone's driveway. I must have misparked.

MALCOLM: Sure.

MASSON: It'll just take me a sec.

MALCOLM: Okay.

MASSON: Okay? Or do you want to call right back?

MALCOLM: Uh, I'll hold on. That's okay.

MASSON: Okay, just one sec.

MALCOLM: Sure.

MASSON: Hi. Uh, I guess, you know it's a little bit like the business world or the social world. I mean, it wasn't, it wasn't a scientific world, you know? I don't think that people in the sciences would have this same kind of problem, do you?

MALCOLM: I don't, I don't know about the sciences. I mean, one, one, it's probably in every organization world [???] some kind of double standard [???]

MASSON: Yeah, but that, it would be so intimately connected to what you do. I mean, I think if you were a embarrassment socially, it wouldn't affect your standing as a physicist but I think here, well, it's, it's hard to get one's finger on it, but I think that with something, I mean I think that there really is this thing, I mean, I was just thinking the other day, the very fact that they would call Freud, all these people, still today, The Professor.

(Tape 7 at 14:18 to 15:28.)

MASSON: The rumor has gone around that I seduced Anna Freud. Literally.

MALCOLM: Really?

MASSON: Yeah, literally, and that's why—she's eighty-seven—I mean, if you look at her nobody has ever seduced Anna Freud,

believe me. But, I mean, it's natural, you know, and they'd all say, "Oh, Masson, he's the darling of the International." Originally in Toronto, and then, "Oh, now he's become the darling of Anna Freud and Eissler." And it's true, but it's only true in so far as, I mean, I am exactly as I am with you, and they like that, and even Anna Freud, she complained endlessly to Muriel Gardiner. She said, "You don't know what it's like having Masson in my house. It's like my dog." She has these, you know, she inherited these dogs from her father, these Chows, and they're totally unmanageable. She adores them. They race around the garden, they tear up everything, they get into everything. She said, "Masson is just like, uh, uh, Sophie," I think her name was. And I was supposed to inherit them. She asked me if I'd take the dog. She adored him. Lovely dog. But he gets into everything. He's irrepressible.

(Tape 1 at 36:23 to 37:13.)

MASSON: And I suppose the question is "why?" Who would Eissler—somebody in France said, "*Monsieur Masson, si vous etes un lapin,*"—"if you're a rabbit"—"*on n'invite pas un renard,*"—"one doesn't invite a fox." "Now you are a fox. And the analysts are rabbits. Why did they invite you down into their lair?" And it's a good question. I mean, it's not [???] He told me, "You don't know the number of phone calls I would get, Masson, every time you would go anywhere on a trip, I would get an urgent telegram, an urgent phone call: "Leash your maniac Masson. Please. You know, you don't know what you've unleashed on the analytic world. You're sending this man around. He's going through everybody's papers. He's coming up with all

kinds of things. He's talking about it. He's irrepressible. This is not good for analysis." And Eissler was adamant. He said, "Nobody will tell me what to do."

(Tape 1 at 38:25 to 39:11.)

MASSON: And they complained. Eissler said, "You went to see Bleuler, a European professor of psychiatry, wearing a t-shirt and blue jeans, ahh, does that show judgment, gentlemen?" You see, Bleuler—

MALCOLM: At this meeting he said that?

MASSON: Yeah, yeah, "And what was the result?" And I said, I was so pleased because I had a trump card, "The result, Dr. Eissler, is right here in a letter from Bleuler saying he's giving me the letters. Ya."

MALCOLM: [laughs]

MASSON: "Well, that's interesting. Well, you charm everybody. Yes, you charm everybody, it's true. I never said it's not true. You are a charmer. You can charm anybody. You charmed me. You charmed everybody. You charmed Anna Freud." But with a slight hint that this was a psychopathic quality. I had the charm of the impostor sort of, I mean everybody was thinking: Ah ha, you know, the classic paper of Abraham on the impostor. It's a real Felix Krull character, that's what I was. I had managed to worm my way into the graces of Eissler and Anna Freud and Muriel Gardiner through charm and this had worked on them, and they had

like fallen into a spell. I had mesmerized them, and then taken away all these valuable letters and rushed off and published them, to damage and destroy psychoanalysis out of some kind of Oedipal or unresolved struggle with my father, cheap.

(Tape 6 at 48:7-27.)

MASSON: I couldn't get patients, I couldn't meet people, and I didn't know what to do. And I turned to these people who were supposed to be my friends and helpers and none of them offered anything. I mean they—nothing, literally nothing. Now I was totally available, totally free, I didn't have a practice, I wasn't doing anything, I wanted to meet people. And nobody went out of their way. They felt, in a sense, I was a private asset but a public liability.

MALCOLM: Uh-hm' 'm-hmm.

MASSON: They liked me when I was alone in their living room, and I could talk and chat and tell them the truth about things and they would tell me. But that I was, in a sense, much too junior within the hierarchy of analysis, for these important training analysts to be caught dead with me.

(Tape 12, at Frits Staal's house, at 15.)

MALCOLM: When they're in analysis, they're in this regressed state, right—

MASSON: That's right.

MALCOLM: —and they go around worshipping the older analysts, and—

MASSON: Yeah.

CAMMELL: Hmm.

MASSON: Yeah, and tell stories about them, all the time—

CAMMELL: And you did it, you, you did it.

MASSON: Suck stories. They're great suckers, and it's a question of who can suck the most.

CAMMELL: You did it too, because you did it for a while, right? You had to go through it?

MASSON: Oh God, did I go through it. I mean, I remember Shengold telling me: "Imagine my amazement, Jeff, one day the phone rings and I pick it up and I hear 'Kurt Eissler here.' I nearly fell off my chair, I nearly collapsed. Kurt Eissler calling me, Leonard Shengold, what do you make of that? I was trembling as I picked up the phone." I mean now that is an absurd notion.

(Tape 12, at Frits Staal's house, at 24.)

MASSON: I can remember, eh, sitting at a dinner party with various so-called important analysts. Well, they are important if you, you know, within that hierarchy here. Various of the training analysts here. And I desperately wanted to be recognized as

somebody to be taken into account; this was before anything had happened. And I kept waiting for the phone to ring and somebody important—And sure enough, the phone rang during one of these dinners, and we had a, a, a maid at the time, and she said, "There's a certain Dr. Eissler on the telephone." And everybody looked at one another, and I was so pleased—

STAAL: Yeah, of course.

MASSON: —I could have fainted on the spot.

CAMMELL: Eh-hah.

MASSON: And I said, "Tell him I'm having dinner, I'll call him later." And I would have, sort of clapped my hands with glee. Now that is a totally childish, adolescent reaction.

(Tape 12 at 25.)

MASSON: Anna Freud told me, "If my father were alive today he wouldn't become an analyst." I swear, those were her exact words. No. Well, this is important. Cause I, I said that to her. I said, "I have, Miss Freud, I have the feeling that if your father were alive today, he would not become an analyst." And she said, "You are right." And she would never, ever say that in public. And, in effect, when I said that I was fired. Is that right? If she really believes it, and if it's really true, why should one, why should one not be able to say it?

(Tape 1 at 46:7-16.)

MASSON: I was a very promiscuous person. Sexually. Until quite recently, I mean, all over the world. That was another thing that Eissler, Eissler knew about it and didn't mind my always bringing mistresses over to see him. And he loved it. "Ah," he said, "who are you bringing now?" But he didn't, you know, he got lots of calls, "What is this guy doing here; he's coming in with some woman?"

(Tape 2 at 10:3-9.)

MASSON: I, I suppose the real answer is because Eissler adored me, and Eissler was all-powerful with Anna Freud, and once Anna Freud liked me as well, there was nothing to stop me.

(Tape 5 at 33:27 to 34:1.)

MASSON: I was the bad boy he [Eissler] always wanted to be, and not only that, I was successful at it, and I had a certain charm...

(Tape 5 at 34:27-28.)

CAMMELL: Yeah, maybe people, maybe these people really, I don't know, you *are* c[illegible]rming, maybe they really—

MASSON: Fell in love? That's what somebody said about Eissler, that he was in love—that's what Furst said. Furst said to me, he said he behaved like a jilted lover.

(Tape 12 at 12.)

MASSON: Well it's true that most of these people don't in fact have close friends. It's hard. And it's very hard I think to find a close friend who shares your interest and shares your point of view, and your way of looking at the world and Eissler and I, and Vic Calef and I, certainly saw the analytic world in the same way. You know, all I would have to do is mention Mahler's name and they'd both gag, or you know, one could amuse oneself for hours mentioning all the famous writers in psychoanalysis who were poor, bad, junky, and we would talk about it and why. I mean, we never had a disagreement. And if I admired anybody they would be sure to admire them.

(Tape 12 at 13.)

MASSON: Yeah. He (Eissler) could do anything. I think in the end he just got too frightened. It's like the Sorcerer's Apprentice, you know, he had unleashed something and he couldn't stop it. What would I find next? And if he could be certain that what I found would stay with me, then that would have been fine, and I think that's where he went wrong, that's what he expected me to do. It would be family. He and I would talk about anything, but we would never go outside and talk about it.

(Tape 5 at 35:24 to 36:3.)

MASSON: Yes, definitely. I saw things that he never saw, but I wasn't willing to shut up about it. If I had, everything would have been fine.

(Tape 5 at 37:1-3.)

MALCOLM: —that maybe it would be good to play it out with, with a, with a woman analyst.

MASSON: Oh, I agree—

MALCOLM: And in the—

MASSON: But it would have been, but I don't—

MALCOLM: —way, to fall in love with your analyst as one does with the one of the opposite sex—

MASSON: Right.

MALCOLM: —and then see what happens.

MASSON: Oh but it would have been absolutely devastating for me, I mean, I would have put such effort into seducing her that—

MALCOLM: Yes, you would have, but if she was, if she was good, she would not have gone to bed with you and that might have been something that you would have found something interesting in, no?

MASSON: Yeah, but imagine the tremendous disappointment there if she had. [laughs] I mean in a way, you see, I seduced Schiffer. I didn't; it didn't happen sexually, but—

MALCOLM: Yeah.

MASSON: —it happened emotionally.

MALCOLM: Yeah, yeah.

MASSON: And that was a great disappointment to me. I mean when he calls me now, it just saddens me, you know? When I feel these attempts on his part to get close to me and to use me, and the reason it's so sad is 'cause I realize that, you know, he, he's hungry ultimately. He really wants something from me and that part of the pact of an analysis is you don't want anything from the patient.

MALCOLM: That's right. There should be that—like Zen desirelessness, right?

MASSON: That's right, I mean, it is a sort of monkish kind of thing which is another good reason why I shouldn't do it, you know? I don't like monks. Uh, I also don't believe in them. I don't believe that anybody is a successful monk.

MALCOLM: But you should probably meet somebody you can't seduce, no? In—

MASSON: That, that would be nice. [laughs]

MALCOLM: [laughs] It would probably be a very interesting experience for you.

MASSON: I'm sure it would be.

MALCOLM: But you feel very pessimistic about that, right?

MASSON: Yes.

(Tape 20 at 7:4 to 8:19.)

MASSON: And then when I said, "Well, but after all I did get them," he said, "Yeah, because you can charm anybody."

MALCOLM: Yeah, I see. Okay. So—

MASSON: But you see, I mean, on the other, on the other hand, Eissler in this letter that I read you is complaining that everybody, literally just about everybody that ever met me complained.

MALCOLM: And is that true?

MASSON: Yeah, I suspect it is true. But you must remember who these are. These are all the analysts. And he said, "The exceptions were Muriel Gardiner and Anna Freud," and that's it really.

MALCOLM: Those, those were the three, yeah.

MASSON: Yeah.

MALCOLM: You, your three, three protectors.

MASSON: And people—He excused people like Parin, who were communists, or anybody left-wing. But any normal conventional person was not happy to meet me. And he felt, uh, that I was

therefore bringing disgrace on the Archives. And I think he got a lot of this. I think that every time I went to a meeting, people would call Eissler.

MALCOLM: Yeah, yeah.

MASSON: And I think that they were often just puzzled. You know how is it—? Now he did get something of the other side. Uh, and I finally said to him, "Well, are these people you respect?" And he said, "No."

MALCOLM: Um-hmm.

MASSON: And I said, "Well then, you should be pleased." He said, "Yes, that's a point. That's a good point."

MALCOLM: Um-hmm.

MASSON: He was very pleased. He said, "Yes, yes, you're right. I should keep that in mind."

MALCOLM: [laughs]

MASSON: And it's true. He would call me up and he'd say, "You know what so-and-so said about you? He says that you're dishonest." And I said, "Well, is so-and-so reliable?" "No, of course not." I said, "So what do you care?" [laughs]

MALCOLM: He's, he's a very artless man in some ways, isn't he?

MASSON: Yeah, he is. I mean he's, like he's very easily taken in.

(Tape 20 at 48:26 to 50:10.)

MASSON: Every analyst loves, I mean, you know, the way to get one-up is to use the word "Anna." Nobody calls her Anna, but everybody pretends to. [laughs]

MALCOLM: [laughs]

MASSON: "When I was with Anna," and they were not, of course, I mean, that's that's one-upmanship, to to say, "I know Kurt Eissler. Kurt and I were talking the other day and he told me—" That kind of thing. They love it. Analysts are the worst name droppers in the world. And ultimately the whole idea is to get close to Freud and to get close to some documents, so it was a very traumatic experience for American analysts to see this young guy running around with thousands of letters sticking out of every pocket.

(Tape 5 at 36:13-25.)

THE BOOK

"Maresfield Gardens would have been a center of scholarship, but it would also have been a place of sex, women, fun. It would have been like the change in *The Wizard of Oz*, from black-and-white into color.

"When word got around that Eissler had made me his successor, other things started to come my way. I was made a director of the Freud Copyrights. This is the group, made up of Mark Paterson, Masud Khan, Mrs. E. L. Freud, and me—I still haven't been kicked off it, for some reason—that controls the copyright of Freud's writings. My appointment happened through Masud Khan. He's a well-known English analyst. At first, he was very suspicious of me, but when he saw the future—how I was coming in and taking over from Eissler—he wanted to be on good terms. So he invited me to his house and wrapped his arms around me and said, 'My dear boy, you must become a director of the Copyrights.' He's a very handsome man, about six feet seven. His full title is Prince Masud Khan—he's an Indian raja—and he's very fashionable. He used to be married to a Russian prima ballerina. And he's generous—he gave me books and a big picture of himself at our first meeting—and very articulate. He says what he thinks. He's got class and he's fun, and we took to each other right away..."

(*In the Freud Archives*, pages 33-34.)

MALCOLM'S NOTES

Maresfield G would have been a centre of scholarship, but it also would have been a place of center of sex, women, fun. It would have been like the change, in the wizare [sic] of oz, from black and white into color.

(Exhibit B to Malcolm Declaration, CR 95, Supplemental Excerpt of Record in Ninth Circuit at 30.)

THE TAPES

MASSON: Masud Khan invited me to this house and he said, "My dear boy," putting his arms around me, "You must become Director of Copyright." I said, "Well—" He did that actually and he did it because he liked me and he liked me because I was in well with Eissler and I had, I mean, he saw, you know, the future. I was coming up and I was going to be taking over, and he wanted to be on good terms. He, you know, is very political that way. Gave me a big picture of himself and wrapped his arms around me and gave me books. He's fun and he's generous, a very handsome man, about six foot, seven inches, looks like a giant. Very articulate and says what he thinks and he's very fashionable. He's married to a prima ballerina, a Russian woman and—

MALCOLM: Makharova.

MASSON: Yes. He's married to her and he's got lots of, he's got class, you know. And he's fun. I like him. So, and we got on very well. That was the first time we ever met and you know, it was buddy-buddy, and we were to stay with each other and [laughs] we were going to pass women on to each other, and we were going to have a great time together when I lived in the Freud house. We'd have great parties there and we were [laughs]—

MALCOLM: [laughs]

MASSON: —going to really, we were going to live it up.

(Tape 9 at 17:23-18:18)

MASSON: I was a very promiscuous person. Sexually. Until quite recently, I mean, all over the world. That was another thing that Eissler, Eissler know about it and didn't mind my always bringing mistresses over to see him. And he loved it. "Ah," he said, "who are you bringing now?" But he didn't, you know, he got lots of calls, "What is this guy doing here; he's coming in with some woman?"

(Tape 2 at 10:3-9)

MALCOLM: Well, you commented that you slept with a thousand women. I was nearly reminded of that scene in *Don Giovanni*, you know, the Leporello—and Bob—

MASSON: Yeah.

MALCOLM: —I talked to him yesterday. I forget what the context was, but he also used that number—

MASSON: Yeah.

MALCOLM: —of all these women that you've slept with, and I thought, I mean, "Did you really count?"

MASSON: No, but I, I once figured it out in terms of you know, I slept with so many women per week for so many years—

MALCOLM: That, that's a very large number.

MASSON: Close to a thousand, yeah. I mean that's accurate.

It is around that. I'll say between seven hundred and thirteen hundred, something like that.

(Tape 13 at 27:2-25)

MALCOLM: How did you first become interested in analysis?

MASSON: Well, I was very neurotic myself and I, my main symptom was total promiscuity, sleeping with every woman I could meet.

MALCOLM: This was as an adolescent or—?

MASSON: As an adolescent. At Harvard. And I went to see—

MALCOLM: You were an undergraduate and graduate student at Harvard?

MASSON: Yeah. And I went to see Erik, Erik Erikson, and asked if I could go into treatment with him, and he said, "No," but he knew somebody very, that he had great respect for, and I went to see this person who was an analyst and I went into therapy. Then I left for India and then I still had the same problems, so when I got to Toronto, I went into therapy again, and then I decided to go back and really go into analysis five times a week to get to—

MALCOLM: But, by the problem of promiscuity, you would just fall in love with a lot of girls—?

MASSON: No, no, I didn't fall in love. I just screwed a lot of women, like, you know, a different woman, two or three women a week.

MALCOLM: You didn't care about them? You just wanted to, to have the sex?

MASSON: Yeah, I just wanted sex. Lots of it. With lots of different women. And it never seemed to get any better. And it seemed to me that that had something to do with my childhood and that I could find out something about it through analysis, that surely this was not just—I mean, I didn't say to myself: Well, you're just a lovable guy [laughs]. You know, you just love women and women love you, so it's easy. I knew there was something wrong with it, something was preventing me—

MALCOLM: You saw it as an illness?

MASSON: Yeah, I saw it as an illness.

MALCOLM: Just by yourself or did somebody kind of, you know—?

MASSON: Well, a lot of the women would help me. You know, women didn't like that. I'm, I'd sometimes get closer to a woman than just sleeping with them one night. Sometimes I'd be with them for a few weeks or a few months, but I was always looking around for other women. And they'd say, "Hey, you know, you're sick and I'm in love with you. Why aren't you in love with me?" That kind of thing. And after a while, I realized:

Well, you know, I can't say because I'm looking for the right person. I'd met, I don't know, I'd slept with close to a thousand women.

(Tape 5 at 2:7-3:25)

MASSON: So I went to Harvard. I really think I would have done much better anywhere else.

MALCOLM: Yeah, yeah.

MASSON: It just wasn't for me, you know. It was an awful atmosphere. In a way, I mean it was good for scholarship.

MALCOLM: Yeah.

MASSON: You know, if you really wanted to become a scholar, by God, that's what I wanted more than anything in the world. I wanted to become a scholar. That was just my, I don't know, like some teenager who wants to be a football player.

MALCOLM: Yeah.

MASSON: I just was desperate. And I did. Uh, but it cost me a great deal doing it.

MALCOLM: Yeah, so, so you had a painful experience there?

MASSON: It was a very painful experience. I was quite miserable for a while. But there were always, I mean, thank God, there were

women and I went off to Wellesley and I met lots of women and I screwed around a lot and that helped.

(Tape 7 at 8:2-20.)

MASSON: I mean, I've never met an analyst who wasn't dull. If you can name me one that I know, uh, I mean, as a person. I mean, even Shengold, he's dull. You know, you spend, you're not going to go off on vacation and have a great time with Len Shengold. You know, he's overweight and he's not in shape. You know, to find an analyst who [laughs] is just sort of normal and likes to do things, I mean, I couldn't imagine palling around with an analyst. You know, "Let's go pick up some women. Come on, let's—" They wouldn't do that, right?

(Tape 7 at 20:3-12.)

THE BOOK

A few days after my return to New York, Masson, in a state of elation, telephoned me to say that Farrar, Straus & Giroux had taken *The Assault on Truth*. "Wait till it reaches the best-seller list, and watch how the analysts will crawl," he crowed. "They move whichever way the wind blows. They will want me back, they will say that Masson is a great scholar, a major analyst—after Freud, he's the greatest analyst who ever lived. Suddenly they'll be calling, begging, cajoling: 'Please take back what you've said about our profession; our patients are quitting.' They'll try a short smear campaign, then they'll try to buy me, and ultimately they'll have to shut up. Judgment will be passed by history. There is no possible refutation of this book. It's going to cause a revolution in psychoanalysis. Analysis stands or falls with me now."

(*In the Freud Archives*, page 162.)

MALCOLM'S NOTES

You watch when this book hits the best-seller list, the analysts will crawl back. They move whichever way the wind blows. They will want me back, they will say Masson is a great scholar, a major analyst, after Freud he's the greatest analyst who ever lived. Suddenly they will be calling, begging, cajoling, please take back what you've said about the profession, our patients are quitting. When I was fired the Los Angeles, San Diego, and Detroit institutes cancelled my appearances to read papers. Believe me, when the book reaches the best seller list, they say Masson was always our choice for being the major speaker. The dum dums will say its crazy. But there are not that many of them. They will try a short smear campaign, then they'll try to buy me, ultimately they will have to shut up. Judgement will be passed by history. There is no refutation of this book possible.

It's going to cause a revolution in psychoanalysis. There is not a patient in analysis who will not come holding the book in his hand and say, why didn't you tell me this? What the hell is going on? We want an explanation. This man is telling me that there is something profoundly wrong at the core of the profession. There is something wrong at the core.

(Exhibit B to Malcolm Declaration, CR 95, Supplemental Excerpt of Record in Ninth Circuit at 28.)

THE TAPES

MASSON: Yeah but I've become, for better or for worse, analysis stands or falls with me now.

MALCOLM: Well that's a very grandiose thing to say.

MASSON: Yeah, but it's got nothing to do with me. It's got to do with the things I discovered.

MALCOLM: Well, whatever, that's still a (???) thing and, and I'm not there yet.

MASSON: Well, you'll see.

MALCOLM: I can't think in this global yet. Maybe I will—

MASSON: You will.

MALCOLM: —after I've talked to a few more—

MASSON: Maybe you won't until you've written the article and see the reaction but it will, analysis is either going to face this kind of stuff that I've found, which are historical documents, and change or they're going to deny them and they're going to become destroyed.

(Tape 8 at 51:11-27.)

MASSON: I mean, just—You're going to hear it. Talk to enough

analysts and get them right down to these concrete issues and you watch how different it is from my position. It's utterly the opposite and that's finally what I realized, that I hold a position that no other analyst holds, including, alas, Freud. At first I thought: Okay, it's me and Freud against the rest of the analytic world, or me and Freud and Anna Freud and Kurt Eissler and Vic Calef and Brian Bird and Sam Lipton against the rest of the world. Not so, it's me. It's me alone.

(Tape 6 at 61:21 to 62:2.)

MALCOLM: Well, Freud started it all.

MASSON: He was the first analyst.

CHILD: [???]

STAAL: See, I know, I know very little about Freud—

MASSON: Analysis was started in 1895 and—

STAAL: —and psychoanalysis. I know more—

MASSON: —it died in 1982.

(Tape 12 at 34.)

MASSON: No, I'm just trying to think of what, you know, because it's been—It's new to me, in a sense, all of this, and it's all, really in the last week, I went to Europe and suddenly it was

like a bomb bursting. *Le Monde*, I never expected *Le Monde* to phone me. And *Spiegel*, I mean they all want to do all of this. And I'm trying to figure out what it is, whether it's—I, I have a feeling there is a real groundswell beginning about the whole of therapy, psychoanalysis, psychiatry, that there's something profoundly wrong and that people sense this and they want something they can, "Ah-hah, here is what it is."

MALCOLM: Um-hmm.

MASSON: So I feel that, you know, my story, I mean it's hard to avoid it. Even at this famous witch trial with the thirteen [laughs] judges and myself, the whole question of Ferenczi came up. And they said, you know, this, "We can't help thinking of Ferenczi; this is what happened to Ferenczi at the end, too. He was paranoid." And I said, "Yes, but look, A: I'm not paranoid, B: Unlike Ferenczi, I'm not sick. I'm not old, I'm not tired, I'm young, I'm a good fighter. If you people want a fight you're going to get one. There're thirteen of you and one of me, that's just about the right odds. Considering how frightened all of you are." And I pointed out to them that they had been terrified. Every time Eissler said even the most absurd thing, they would all agree with it.

(Tape 1 at 2:4-28.)

MASSON: And I've got to soon sit down and, you know, work ten hours a day on my book because it's everything, everything hangs on that book. I have a French contract, an Italian and a German. Hopefully, Harvard is going to take the book now and give me some money. If they don't, Farrar, Straus.

(Tape 5 at 57:2-6.)

MASSON: Yeah, so I don't have a publisher, and my feeling is if I don't get one, fuck them. I'll let the book come out in Europe and they'll be sorry, you know, it'll create all this storm and a lot of attention, and then they'll come to me and say, "Well, we'll pay you this, that and the other," and then I can pick and choose. At present, if I got ten thousand dollars in advance, I'd be happy. And Arthur told me on the phone, "That's chicken feed. Is that all Farrar, Straus is offering you?" I said, "No, they haven't even offered. They just suggested the possibility of ten thousand dollars." He said, "Chicken feed!"

(Tape 5 at 58:4-14.)

STAAL: You know what Schopenhauer said, the difference between being young and being old? When you're young, and the telephone rings, you, but he really said it well, *Da Komnt es*, "Now it is coming." And then you are old and the telephone rings, and you say, *da komnt's*, "There it is."

MASSON: That happened even today. I mean, there is a sort of—The phone rang while Denise was there, and I said, "There's my future."

MALCOLM: Uh-huh.

MASSON: And, uh, it was long distance from New York, and he says --

STAAL: Denise your young [???].

MASSON: —[???] from Farrar Strauss, and, uh, we received your manuscript, we're very interested, we want to publish the book. And I got that certain, heart going, you know?

CAMMELL: But even—

MASSON: And, yeah, when you called—

CAMMELL: —when you—

MASSON: —when you called.

CAMMELL: It was so bizarre, he'd come back from, from um, France the night before and the phone rang and he said, he said something it was just incredible, I mean it was incredible, and there you were on the phone. Really amazing.

MASSON: And I, it's too good, I swear, I had had—

CAMMELL: [Simultaneously] Two calls like that, he said, today, "There's my future," and it was this person—

MASSON: I had the fantasy—

CAMMELL: —with money.

MASSON: —when I was in France, I was mad, when I had an interview with *Le Monde*, which is very prestigious in France, and

it will come out on Sunday, "Well, that's fine but it doesn't do me any good, I'm, I'm not there. I wonder why somebody like Janet Malcolm from *The New Yorker* doesn't phone me?"

(Tape 12 at 30-31.)

These were my three friends. Anna Freud, Muriel Gardiner and Kurt Eissler. Everybody else, like Wallerstein, hated me. Would have done anything to get rid of me. [???] Envious, and you know, they genuinely felt I was a mistake, and a nuisance. And a potential danger to psychoanalysis, a really critical danger. They sensed that. And they were right. "This man could single-handedly bring down the whole business."

(Tape 1 at 39:13 to 39:20.)

MASSON: Uh, and when these, this book comes out, it's, uh, I mean I really feel it spells the beginning of the end of psychoanalysis, and he's definitely going to blame me, as will every other analyst in the world for having done psychoanalysis an irreparable damage. But what they'll say beyond that is still a puzzle to me, how they're going to reinterpret the documents I've found so that it, on the contrary, uh, enhances Freud's image is totally mysterious to me.

MALCOLM: Um-hmm, um-hmm.

MASSON: Undoubtedly they will try that. But I don't think they're going to fool the whole public you know. I think that this book really is, uh, it's the end for them.

(Tape 21 at 19:16-27.)

MASSON: ...[W]hat I'm showing in all my work is that Freud said so for reasons that are not honest, and that's why analysts are so upset by it. Because if I am right, and it's very hard to prove that I am not, then they've got to say, "My God, what the hell have I been doing all these years to my patients?" And that's, that's the essence of this business. It's scary for analysts and I assure you that every analyst you talk to is going to be scared. They're not happy. And I don't think it's going to go away. I really don't. I don't think that this whole controversy is just going to disappear.

MALCOLM: No.

MASSON: But, that's what they'd like to say. "This is just another upstart, you know, Masson, like many people, feels that he knows more than Freud. It will cause a stir in the press because of this article in *The New Yorker* for a week or two and then it will die down and then we'll continue in our profession as we always have, searching for the truth." That's not true. It's not going to die down. It's not going to go away, and the reason it's not is because these things are written by Freud, not by me. Freud wrote these letters, I didn't. I just found them and patients are going to say, "What the hell is going on here?" They're already say (sic) it. I know it. I've heard it from analysts close to The American Psycho-Analytic. The office was swamped when all these articles came out.

MALCOLM: Yeah.

MASSON: With people calling saying, "What the hell is going on in analysis? What secrets are you guys keeping?"

"What secrets are being kept from us? What is going on in analysis?" Patients are asking that. "What, what, what is this about Masson? I mean, is this not true? Tell me why?" They're asking those questions and they're worried, and I don't blame them. I would be. If I had been a patient and somebody else had come along with all this information, I would have called him already and said, "Hey, wait a minute. This really affects me. I'm in analysis. I want to know. How are people responding to this? What's the analytic answer to this? Are they assimilating it? Are they taking it seriously? What are they doing about it?" I'd have been very worried and I think patients will be very worried and they will be worried for a long time to come. And they, the practice is going to diminish. People are going to stop going. I know it.

MALCOLM: Well, people are going to stop going when they stop having problems, and as long as people have problems they're going to go to some kind of therapist or another—

MASSON: Well, that's the problem. They're going to go to people that are a lot worse than analysts and I'm sorry but, you know, that's not my concern. It's like saying, "Well, what happens to all these students who want to do Sanskrit now that you've wrecked the department?" It's not my problem. It's my problem to find out if something's true or false, corrupt or incorrupt and afterwards, what gets done. It's not my concern.

(Tape 8 at 32:16 to 34:12.)

MASSON: Oh yes. Until, but, but then it switched, you see, once Eissler took me over, and I [???]—

CAMMELL: Then they all want you, huh?

MASSON: Then they suddenly, you know, "Our friend Masson." As long as I was within the hierarchy then I became, "Well, you know, we always knew Jeff would do well." "My friend, where have you been, I haven't heard from you in so long." "I understand you're head of the Archives, can you get me this, can you get me that?" And then they, then they start suddenly, "Would you help us with this, would you help, would you send us this, would you send us that?" Then I get thrown out of the Archives, and not a word of greeting any more. Now you cannot call that loyal friendship.

(Tape 12 at 16.)

MASSON: And most analysts are going to talk about it, too, with their patients. I know that they already are. If they say, "This is nonsense," then people are going to react a little bit like the Hartmann story: "Thank you very much. I won't be returning."

MALCOLM: Yeah.

MASSON: It's going to happen and I'm not, I don't care really. I mean, I don't feel, I mean, it's just not as if I have sleepless' nights over what I'm going to do to analysis.

(Tape 8 at 34:27 to 35:7.)

MASSON: Yeah, oh yeah, I mean there's certainly real historical [???] documents that deserve a study. I mean I could write a brilliant article about the tapes of the Archives.

(Tape 19 at 41:25-27.)

MASSON: Yeah, I think it really is, but I think you'll be glad that it is because I really feel that this is going to take a historical place, you know. It's, it's not just a, a, a pleasant article about some theme that's captured people's interest. It really is something that's going to be significant cause I'm absolutely convinced. The more I look at this, and like presenting it to somebody like Nancy Miller over the last three days, who came quite fresh and realizing the impact that the story finally has when they've absorbed all the information, I realize it really is going to affect the practice of psychotherapy. There's no question of it. So that I think that the, the material surrounding it is terribly important and I—

MALCOLM: Um-hmm.

MASSON: —I mean, and she also, Nancy Miller agrees with me that it's not my place to talk about it.

MALCOLM: Yeah.

MASSON: That in the book I'm not going to say anything about myself whatsoever, and what I did or how I found things or who I know or, but it is, it is the, the obvious question. Everybody's

gonna want to know: "How did this happen?" And at that point your article will be there—

MALCOLM: Um-hmm.

MASSON: —and that's absolutely perfect. I mean the timing couldn't be better. By the way, the book was sold to Faber & Faber.

(Tape 19 at 13:2-26.)

MASSON: Yeah, yeah, well he's, he's (Eissler's) going to have to write a whole library when my book comes out.

(Tape 19 at 4:22-23.)

MASSON: Oh, they'd just stall it forever. And they would hope that somebody would not call attention to anything. Not that I have, mind you. I have been very careful not to use it as a, uh, loudspeaker for my views. There are no, I mean I don't even say, "Note what Freud says," I just simply annotate it in a purely historical manner, but I think that they're so frightened—Anna Freud was and Eissler of what this, the implications, the full implications, I mean, that's the book that's going to bring down psychoanalysis. Uh, not mine, but only because my book is there, you see—

MALCOLM: Yeah.

MASSON: —it wouldn't have without mine; it would have taken

years before anybody would have picked up anything.

(Tape 17 at 55:2-14.)

MASSON: I hope not. God, I really want it to come out, I mean not just because it provides, you know, proof of my theory but because it is such an important work.

MALCOLM: Sure but everybody wants it. I mean, I would think all analysts would—

MASSON: All analysts—

MALCOLM: —be interested in this.

MASSON: Well, of course they are. But I think that somebody like Eissler—You should have asked him directly, "Do you want this to appear?" I mean I don't think he does want it to appear.

(Tape 17 at 53:14-24.)

MASSON: I know that some people like me enormously, really take to me and then are very loyal to me, and others hate my guts from the beginning. But I didn't entirely understand that I would have such a catalytic effect on analysis.

(Tape 16 at 16:25-28.)

MASSON: That's right and you know, it's like having one good friend. You know, you need that and when you suddenly discover

you're really alone, like I discovered that night at Eissler's, you know, looking around me and here were thirteen men and two women who had all been around, you know, they'd all done analyses for umpteen years, uh, there was no reason for them not to see what I was saying, and say—a little bit like Furst said afterwards, not at the time but, you know, I expected them all to say right at the time: "Look, Masson, of course you're right; of course these things exist; wonderful that you found them but, you know, this just isn't the way to go about it. We are a profession and we're going to get destroyed if you do this. Now we understand that you have to do it but you should really understand, you can't be part of the Archives," uh, and I would say, "Yeah, I see that." And had Eissler said that to me, "How can I ask you to be running the museum in Anna Freud's house when you yourself are discovering so many unpleasant things about Freud? Of course they're there. Of course they're real. Of course your interpretations are correct. You're a historian but then you shouldn't want to be part of this." And I would say, "Well, you know," I'd say, "Yeah, I guess you're right." He'd say, "The only honorable thing to do, Jeff, is to resign." And I'd say, "Yes, yes, you know, I, I see, you're right. I understand that." But that's not what they did. You know what they had to do was trivialize what I had found, pretend that I was some sort of, uh, narcissistic uh—

(Tape 17 at 12:18 to 13:15.)

MASSON: —you know, all the qualities I knew he (Eissler) had, he still has. Uh, I was surprised that he showed such cowardice. I mean I was convinced that he would say to these thirteen men: "Fuck you," you know, "I don't care what you think. I've never

cared before. I don't care now."

MALCOLM: Yeah, yeah.

MASSON: "And I, I don't expect you to like Masson. Just shut up and do what I tell you." [laughs] You know, sort of thing. I was just amazed at his cowardice and then I was amazed that he didn't have the guts to say to me: "Look, you're a hundred percent right, uh, you haven't done anything wrong, but this is a yucky world and, uh, I have to play by the rules and I'm kicking you out."

(Tape 20 at 18:10-22.)

MASSON: And I would go to this Clark Institute of Psychiatry which is now, you know, I consider one of the rat holes of the world.

(Tape 20 at 27:26-28.)

MASSON: I mean it really, I mean in a sense there is, I mean I do understand one point, namely that I was given access to these documents in the belief that I would enhance psychoanalysis. And what I have done is use these documents to destroy psychoanalysis. Now I understand that but I, I don't feel responsible for that.

(Tape 21 at 18:17-22.)

MASSON: Oh yeah, oh yeah, I mean, you know, I really believe this book that I'm writing is not, you know, it's not just an

opinion. It is the truth.

MALCOLM: Yeah.

MASSON: I mean that's true. It's historical stuff and you know, sooner or later it's going to be recognized. I mean cause it's not my opinion.

(Tape 22 at 17:19-25.)

MASSON: It's true. That's, that's what he (Eissler) would have said: "Never let it out. It's just between the two of us. We can know this. We're strong enough to digest it. But anybody else, it would collapse—It would be the beginning of the end of psychoanalysis." And the, of course, then the next step would have been to say: "But, Dr. Eissler, surely we don't have the right to hide away information simply because it's going to destroy a profession, if it's the truth?"

(Tape 22 at 18:14-21.)

MASSON: And, uh, I mean it's sad, you know. I can't really believe that there's anybody who will appreciate this book I've just written more than Eissler.

MALCOLM: Yeah, yeah.

MASSON: In some way. I mean he'll never admit it. He gonna, you know, he'll kill himself when he reads it. It's gonna destroy him. But I mean, he will, he will be utterly fascinated by it.

'Cause it's exactly the kind of scholarship he admires.

(Tape 22 at 22:21 to 23:4.)

MASSON: But I—She's not terribly, you know, not unusually bright and she doesn't know much. Well, as you'll discover, most analysts don't know really anything about the history.

(Tape 19 at 47: 18-20.)

MASSON: But I don't think that's entirely honest 'cause I think, like you, I think that he (Eissler) really did know somewhere that I wouldn't do what he did—that I would do much more. And be much braver and that these are the things he couldn't do, but secretly wished to do.

(Tape 19 at 36:11-15.)

MASSON: Sure, well, listen, you have to keep your total freedom for it and, you know, just do what has to be done, uh, I don't think, you know, I mean certainly for you it doesn't matter if it comes just before or just after the book and I don't think really, you know, I mean my concern cannot be with how well the book sells. I think the book's going to sell on its own because of what's in it and—

MALCOLM: Definitely, that's right, yeah.

MASSON: —it just has to take its chances out there in the real world and tha,'s—

MALCOLM: Well, you've got a good publisher, that's, that really—

MASSON: I've got a good publisher and *The New York Times* is definitely going to do the story before the book comes out—on the book, and I, you know, even my typist, just some ordinary typist typing it, she said, "God, I can't imagine what analysts are going to say."

(Tape 17 at 41:14 to 42:2.)

MASSON: I can't imagine any analyst reading that (Masson's) book and coming away indifferent.

MALCOLM: Yeah, yeah.

MASSON: It's just not possible, you know, it's just too, the material itself is just too powerful, uh, all this stuff so, but I'll see—I'm going to have some idea. They've asked me to give, uh, a big lecture in May here on Emma Eckstein.

MALCOLM: Um-hmm.

MASSON: Emma, uh, Freud, Fliess and Emma Eckstein, at the university, so, uh—

MALCOLM: So you'll get a sense of the reaction?

MASSON: I'll get a sense of the reaction from that. I'm really kind of curious.

MALCOLM: Will there be analysts at that lecture too, or or no?

MASSON: Oh yeah, I'm sure they'll come, yeah, cause it's being widely advertised so they'll all come into it, uh, but I, you know, I more or less know, I don't really know what the analytic reaction will be when they actually see this stuff in cold print but I know that it's not going to be a minor one, I mean, they're going to get really upset and especially in the new version. It's much tighter, you know, and the whole thing, it's just more, in a way uncompromising. It doesn't let you go, you know.

MALCOLM: Um-hmm, um-hmm.

MASSON: And I think one of the problems with the earlier version, the one you said, is that I gave so much material and so many other opinions that people could be deflected.

MALCOLM: Um-hmm, um-hmm.

MASSON: And deal with, with things, but I think this way they're going to be forced to deal with the issues.

MALCOLM: Um-hmm, um-hmm.

MASSON: Which I really think are important ones. I really do. And I, I just can't believe that it's not going to affect analysis.

(Tape 17 at 43:3 to 44:9.)

MASSON: He writes beautifully. He writes very well and very

clever and he's good, you know. But he's not a discoverer in the way I am. He won't go out and find new things. He waits until you bring it to him and then he'll look and say, "Yes, I see." But he gets bored very easily. He'll say, "Okay, I see it, don't bother me." He mainly spends his time mocking the people who don't do that. [laughs] At which, he's very good and the two of us together is devastating. If there's some poor guy around who's not as quick as we are, I mean, it's just terrible. People hate us. We're a terrible team.

MALCOLM: [laughs] And talking with Indian accents.

MASSON: [laughs] And talking with Indian accents to boot, I mean unbearable, no question of it, but yeah, no, I didn't enjoy talking to him as much as I enjoyed talking to Terri because she can really think and she's always more deep than I was about everything she'd done. And it was very exciting for a while and I think the two of us, I think that was what our marriage was, you know, a real hive that we had, a real intellectual hive. I can't think of any two people that have ever had a more intimate intellectual relationship than Terri and I.

(Tape 13 at 40:9-28.)

MASSON: Aaah. This is critical. This is really where it all started.

MALCOLM: And you found this in Anna's cupboard?

MASSON: The whole story and it is, I mean, that's, that is the

wedge that's going to topple psychoanalysis. That story.

MALCOLM: But if you topple it and it's the best show in town, and then you're going to have no show.

MASSON: Right.

MALCOLM: So what is, what is everybody going to do?

MASSON: Well, that's a good question. But that's another question. [laughs] I mean, that's not, that's not my business.

MALCOLM: Because everybody [???]

MASSON: I mean, in a sense Eissler could say that. Suppose Eissler were like you, listening, and he says: "You know, you're right. I've looked at all the evidence, I've read it, you're a hundred percent right. But are you aware that if you go out and say this, if you publish this in *The New Yorker*, *The New York Times*, and you publish your book, do you realize what you're doing to the public? Do you realize you will—psychoanalysis will disappear as a profession and what will replace it, Masson? Huh?

(Tape 2 at 5:1 to 22.)

MASSON: And I realize—you know, Fichtner was trying to explain it when I was here. He said, "Look, Jeff, you've got to understand that people like that and me," he said, "you know, spend our lives desperately searching for one single unpublished Freud letter, and we get it and you look at it and say, 'Ech, it's not

so interesting,' because you were given thousands of letters. It's just not fair. You've got to put yourself in our place." And, of course, he's right.

MALCOLM: Um-hmm.

MASSON: I mean, for a Hartmann or a Swales or a Fichtner, you know, they turn up one thing, it then becomes part of their life.

MALCOLM: Yeah. Yeah.

MASSON: And to have someone who then has hundreds and thousands of these look at it, and you know, say, "Yeah, big deal," it's like telling some, you know, peon in South America, who discovered a tiny little diamond and brings it to De Boer, you know, for De Boer, it's nothing; for him it's his life.

(Tape 3 at 45:6-23.)

MASSON: I mean, I've had people say to me, "I have spent my life trying to get one letter of Freud's, and you go there and Anna Freud opens up her bloody desk to you. Why? Why you, you little son-of-a-bitch? What did you do?" And I said, "Well, I don't know." In Chicago that was actually a question from the audience. One of the senior analysts said, "I just want to ask one question. Why you? Who's ever heard of you? We've never heard of you. You're not famous. You haven't written much. You're a nobody. Why should you get all these privileges and we get nothing?"

MALCOLM: How did you answer that?

MASSON: I finally said, "Because I'm smarter than you."

MALCOLM: [laughs]

MASSON: Which is true. "And I know more, too, and I've got more guts and I asked. And I mean, there are all kinds of reasons, and I'm actually very good at what I do," and so on and so forth.

(Tape 5 at 33:10 to 33:26.)

MASSON: Well, but you see, then you have to realize it wasn't just Eissler. If it were just Eissler, and it was just a question between me and Eissler, me and Calef, I mean, okay, it's me and the whole of psychoanalysis, as you'll soon see.

(Tape 12 at 10-11.)

MASSON: I liked the fight but I was in a very strong position in a way. They had really nothing to say beyond, "We're going to fire you because Eissler's told us to." They didn't know anything else and I knew everything and Eissler knew everything. So, I had a lot to say and they really had nothing to say and I could show them up for the cowards they were and I guess I got a certain pleasure from that unfortunately. I would have wanted one friend to be there, someone like Bob or Terri, just one witness of what was going on.

MALCOLM: Yeah, yeah, that's too bad that—

MASSON: It would have pleased me enormously because I was doing, I mean, in effect, I was taking on, it's like, you know, these

child fantasies or these Kung Fu movies, you know, where Bruce Lee takes on fifty men.

MALCOLM: Yeah.

MASSON: It was that kind of thing, you know.

MALCOLM: Yeah.

MASSON: There were these thirteen older men, grown up, training analysts, every single one of them fighting me, and they were losing badly. I mean, they just were no match.

(Tape 6 at 45:1-20.)

MASSON: I want to know what analysts are going to say when my book comes out. I'm really curious because they can't dismiss it the way they can dismiss Sulloway or Roazen. It's not light-weight like Roazen; it's not pretentious like Sulloway. There are new documents. There is no way they can dismiss it. I know that. That is, no serious scholar is going to be able to say: Well, this is just nonsense. They are going to be utterly dumbfounded, and I really believe it is true. Everything I say in there is true. And I think it's going to have a slow effect. I think it's going to eventually break the edifice apart. Just because people are going to hear about it. By luck, it's become well known already. I mean, there is going to be a big press about it, and it's going to be read by a lot of people, and it's going to sink in. You know, patients are going to read it and say: Jesus Christ, if this is really true, and it sure looks that way, what the hell am I doing with this

man?

MALCOLM: Are you saying that everybody in this profession is corrupt, beginning with Freud?

MASSON: Yes.

(Tape 5 at 16:28 to 17:19.)

MASSON: Yeah, my own book. See, I'm not going to interpret in that book. Like I'll give that passage; I won't say a thing. I'm not going to say—

MALCOLM: Will you write an introduction?

MASSON: Yes, a long introduction, but purely scholarly: all the new information I've discovered, but nothing interpretive, nothing, what a shit Freud was [laughs], nothing, just—

MALCOLM: And this will replace that old—?

MASSON: Yeah, *The Origins of Psychoanalysis*. Kris and Anna Freud and Maria Bonaparte.

MALCOLM: When will it come out?

MASSON: I hope September.

MALCOLM: Then both books will come out in September?

MASSON: That's what I'd like.

MALCOLM: Um-hmm.

MASSON: But I think it's going to take longer. It's a, it's a huge three volume work, the Letters, so I don't know. It may take longer. But that is definitely going to shake analysis, too, and that won't be my fault because all I've done is edit the Letters.

(Tape 5 at 24:1-20.)

MASSON: It was the publicity. He said, "If you had published that article in *The Journal of the American Psycho-Analytic Association*, I would have had no objection, but that you went to *The New York Times*, that, that's it, that's what did it." And I reminded him, "I didn't go. You sent them." He said, "Well, you should have been more discrete." I said, "Okay, so I was somewhat indiscrete." "You showed poor judgment." "Fine, I showed poor judgment. Is that any reason to destroy my career?" "Yes." But then, why? The question is why? You see it wasn't just really around me. That's the, that's the whole point. I mean, there was some sense in which they were smarter than I was. They sensed underneath this was a whole groundswell and once this was totally out, all these things I had discovered, it would end up by toppling the business of analysis, and that I really believe. I believe that it's got nothing to do with me, and there's no way I can stop it then when my book comes out and all of this is known, it is going to be the beginning of the end of analysis as a profession.

MALCOLM: Do you have a name for your book yet?

MASSON: Well, I call it, "The Assault on Truth," but I don't like the title.

(Tape 9 at 30:2-22.)

THE BOOK

"[Eissler] was always putting moral pressure on me. 'Do you want to poison Anna Freud's last days? Have you no heart? You're going to kill the poor old woman.' I said to him, 'What have I done? *You're* doing it. *You're* firing me. What am I supposed to do—be grateful to you?' 'You could be silent about it. You could swallow it. I know it is painful for you. But you could just live with it in silence.' 'Why should I do that?' 'Because it is the honorable thing to do.' Well, he had the wrong man."

(*In the Freud Archives*, page 67.)

THE TAPES

MASSON: [Eissler] was constantly putting various kinds of moral pressure on me and, "Do you want to poison Anna Freud's last days? Have you no heart?" He called me: "Have you no heart? You're going to kill the poor old woman. Have you no heart? Think of what she's done for you and you are now willing to do this to her." I said, "What have I, what have I done? *You* did it. You fired me. What am I supposed to do: thank you? be grateful to you?" He said, "Well, you could never talk about it. You could be silent about it. You could swallow it. I know it's painful for you but just live with it in silence." "Fuck you," I said, "Why should I do that? Why? You know, why should one do that?" "Because it's the honorable thing to do and you will save face. And who knows? If you never speak about it and you quietly and humbly accept our judgment, who knows that in a few years if we don't bring you back?" Well, he had the wrong man. Really, I mean, that's just not, not for me.

(Tape 9 at 42:6-21.)

MASSON: She [Anna Freud] never directly attacked me. On the phone she was quite gentle. I mean, she was honest. She said, "My father would never have wanted somebody like you living in this house," which is true I am sure. I understand that. She was upset. She felt that Eissler had lied to her, which he had—I don't know if he had, but he certainly hadn't been totally straightforward with her. Uh, she was upset because she knew that I was in possession of all these documents, and what would happen now? She probably felt that Eissler was making a mistake. At least,

that's the impression I got. Then I agreed, right then and there, I told her, "I'm going to sue Dr. Eissler," and she didn't even object to it. And I did say, however, "I will, I will keep my promise not to publish all this material in such a way that will embarrass you." I didn't want to say, "till you die." But I mean that was clearly—

MALCOLM: Yeah.

MASSON: —the implication.

MALCOLM: Yeah, yeah.

MASSON: And I kept that and to be quite honest, I must confess that I did give that up a few months ago on the grounds that I was told, and I don't want to say by whom because that really shouldn't be said, but I was told very—it's somebody who had heard it directly from her—that I should now be dropped from the Copyright. And I felt that that was unfair, that if she wanted to keep out of the whole thing, I could understand that, if she said, "Look, this is between you and Eissler or whoever, but I'm not involved, my relationship to you doesn't change," then I would retain, I would do for her what I said I would do.

MALCOLM: Um-hmm.

MASSON: But the minute that she, behind my back, started trying to get me off various committees and so on, that I didn't like and I felt that released me then from any obligation not to publish during her lifetime. And I was prepared, in fact, to go ahead with this publication in Germany with Suhrkamp, uh, no matter what

effect it would have on her. And I knew it would have a devastating effect.

MALCOLM: But as it happened, she died.

MASSON: As it happened, she died.

(Tape 9 at 25:23-27:5.)